

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

Judgment Reserved on: May 24, 2016

% *Judgment Delivered on: May 26, 2016*

+ **CRL.A.812/2014**

MAHAVIR @ OLANGA

..... Appellant

Represented by: Ms. Saahila Lamba with Mr.
Tarun Khanna, Advocates.

versus

STATE

..... Respondent

Represented by: Ms. Rajni Gupta, APP.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. By the present appeal the appellant challenges the impugned judgment dated 18th December, 2013 convicting him for the offence punishable under Sections 498A/304B IPC in FIR No.400/2011 registered at PS New Ashok Nagar and the order on sentence dated 21st December, 2013 directing him to undergo rigorous imprisonment for a period of seven years and to pay a fine of ₹10,000/-; in default to undergo rigorous imprisonment for a period of six months for the offence punishable under Section 304B IPC and rigorous imprisonment for a period of three years and to pay a fine of ₹10,000/-; in default to undergo rigorous imprisonment for a period of six months for the offence punishable under Section 498A IPC.

2. The brief facts of prosecution case are that DD No.7A was received in the intervening night of 9th/10th December, 2011 at 2:45 AM stating that a lady has hanged herself at D-381/13, Gali No.12, New Ashok Nagar, near Kajal Cable. The said DD was assigned to SI Praveen, PW-18 who went to

the spot and found the body of a 22 year old lady, whose name was revealed as Savitri, hanging from the hook of the ceiling fan with a chunni. The husband of the deceased was not present at the spot. On inquiry he came to know that she had expired within seven years of marriage and therefore, he informed the SDM, Preet Vihar. He also telephonically informed the father of the deceased. The Crime Team was called at the spot and inspection was done by the team. Photographs of the spot were taken.

3. Around 3:00 PM Netrapal, father of the deceased PW-4 reached the mortuary. The SDM, Preet Vihar PW-12 was also called who recorded the statement of Netrapal who stated that he married his daughter to the Mahavir @ Olanga on 6th February, 2009 (Later corrected as 2010). He stated that he spent ₹1.50 lakhs on the wedding. Mahavir made a demand of ₹80,000/- which was fulfilled by him for the happiness of his daughter. The deceased had told him that Mahavir used to make demand of money from her and also beat her. On 9th December, 2011 around 5:00 PM, he got a phone call from his daughter informing that the appellant was beating her along with his friends Bhola and Rajesh. On 10th December, 2011 he received a call from SI Praveen Lodhi stating that his daughter had passed away. He suspected that his daughter was killed by Mahavir along with his friends Bhola and Rajesh. On the basis of the statement of Netrapal, FIR No.400/2011 was registered under Sections 498A/304B IPC.

4. During investigation, the chunni and viscera of the deceased were seized. Viscera was sent to FSL. Dr.B.N. Acharya, PW-11 who conducted post-mortem examination on body of the deceased opined the cause of death to be due to asphyxia consequent to hanging vide the post-mortem report Ex.PW-11/A.

5. Learned Counsel for the appellant contends that Netrapal PW-4 deposed that the deceased gave him a call and told that the appellant along with his friends Rajesh and Bhola were beating her but no investigation has been conducted and no action has been taken against Rajesh and Bhola. It is also contended that Netrapal had also stated that the deceased was beaten just prior to her death but neither the MLC nor the post mortem report show any injury on her body, thus the allegations with respect to beating are false.

6. Learned counsel for the appellant further contends that Netrapal had taken a loan from the appellant but refused to return it despite repeated requests from the appellant, due to which the deceased used to remain tense. It is also contended that Mansa Ram, landlord of the appellant and deceased PW-10 stated that no quarrel had taken place between the appellant and the deceased hence PW-10 was declared hostile. Furthermore, Kaushalaya (owner of STD booth) PW-14 was also declared hostile as she denied having heard the appellant saying on telephone to either take back deceased or send money to him and also denied that she heard the deceased telling her father that the appellant was demanding the money and harassing her. There are contradictions in the statements of the witnesses as to whom Netrapal sold the property for giving ₹80,000/- to the appellant. No documents of sale of property have been proved. The defense evidence has not been considered. No complaint was lodged with the police during the lifetime about the dowry demand and harassment either by the deceased or by her family members, therefore the allegations made after her death regarding dowry demands are false.

7. Learned APP for the State on the other hand contends that to prove that a sum of ₹80,000/- was given to the appellant, Netrapal was not

required to prove how he arranged the money and produce the sale deed of the land. The ingredients of Section 304B IPC are made out even if money is not paid but a demand is made. Netrapal, PW-4, Omkar Singh PW-5, Roop Singh PW-7, Kailash PW-8 and Ramprasad PW-9 have stated that Savitri was given beatings. The prosecution has proved that in the evening at 5.13 PM the deceased and the accused made a call to Netrapal demanding further amount which is sufficient to prove that soon before death there was a demand for dowry. The other two ingredients of offence punishable under Section 304B having been proved i.e. death within 7 years of marriage and unnatural death of the deceased, the prosecution has proved its case beyond reasonable doubt. Reliance is placed on the decision reported as (2015) 6

SCC 477 Rajinder Singh Vs. State of Punjab.

8. Netrapal, father of the deceased was examined as PW-4. He stated that the demand of ₹80,000/- by the appellant was met by selling 1½ bighas of his land and the aforesaid amount was paid to the appellant about 1 or 1½ month prior to the death of his daughter. He also stated that when the deceased called him in the evening at 5:00 PM, the deceased told him that the appellant along with his friends Bhola and Rajesh was beating her for money after consuming liquor. When he asked the appellant on telephone as to why he was beating his daughter, the appellant told him that he would beat the deceased unless he was paid money. Netrapal pleaded to the appellant not to beat the deceased and assured him that he would arrange the money. During cross-examination, Netrapal stated that the marriage of his daughter took place on 6th February, 2009 (corrected as 2010). He also stated that ₹80,000/- were given to the appellant about 3 months prior to the death of the deceased. PW-4 denied the suggestion that the appellant gave

him ₹35,000/- at the time of the marriage on returnable basis. He denied the suggestion that his daughter asked him to return the money to the appellant. He also denied the suggestion that his daughter committed suicide because he had flatly refused to return the money to the appellant. In cross-examination Netrapal denied the suggestion that he had kidnapped a girl about three-four months prior to the marriage of his daughter but he admitted that he remained in jail for three months in connection with kidnapping/abduction case. He voluntarily stated that it was a false case. Further he denied the suggestion that the appellant had borne the expenses of bail in that case.

9. Roop Singh PW-7 and Kailash PW-8, brothers of the deceased corroborated the testimony of PW-4.

10. Mansa Ram, landlord of the appellant and deceased was examined as PW-10. He stated that the appellant and the deceased were living cordially and no quarrel took place between them in his presence. During cross examination, he denied the suggestion that the appellant used to consume liquor or when the deceased used to stop him from taking liquor, there were heated arguments and quarrel between them. Mansa Ram further stated that when he used to ask for rent, the appellant and the deceased used to tell him that ₹80,000/- was lying with the father of the deceased and they would bring the money and pay the rent.

11. Smt.Kaushalya who runs a STD booth was examined as PW-14. She stated that the appellant and the deceased used to come to her STD booth for making telephone calls. She further stated that the deceased made a telephone call for the last time from her STD booth to her father. She stated that the appellant accompanied the deceased at her STD booth one day

before her death. The appellant spoke to the father of the deceased on telephone and she heard the deceased telling her father to take her and the appellant also told him to take her. On cross-examination by learned APP she denied the suggestion that she heard the appellant saying on telephone to either take back the deceased or give money to him. She stated that the telephone number of her PCO was 9999781182 which was in her name. In cross-examination by the defense counsel she reiterated that Mahavir talked to Savitri's father and told him to take her away and Savitri also pleaded to her father to take her away on the eve of her death.

12. Israr Babu, Alternate Nodal Officer, Vodafone Mobile Service was examined as PW-2. He stated to have brought the CDRs of mobile phone no. 9999781182 and 9675223844 for the period between 9th December, 2011 and 10th December, 2011. He further stated the mobile phone no. 9999781182 was in the name of Kaushalya Devi (PW-14) and the mobile phone no. 9675223844 was in the name of Netrapal (PW- 4). Two calls were made from phone No. 9999781182 to phone No. 9675223844 at 5:13 PM and 5.28 PM thus corroborating the version of Netrapal about receiving phone call from the appellant and his daughter.

13. In view of the testimony of Netrapal duly corroborated by Omkar Singh PW-5, Roop Singh PW-7, Kailash PW-8 and Ramprasad PW-9 coupled with the corroboration from Smt. Kaushalya PW-14 independent witness who heard the appellant speaking to the father of the deceased at 5.13 PM just a few hours before the deceased committed suicide asking him to take away his daughter and Savitri also pleading her father to take her away, the evidence of Mansa Ram PW-10 and Nirmala wife of Mansa Ram DW-1 that Savitri and Mahavir were living cordially is required to be

ignored. Indubitably, there is contradiction in the testimony of Kailash PW-8 as he names Jaymanti as the person to whom the land was sold however said contradiction does not go to the root of the matter as the witnesses have clearly stated that 1½ bigha of land was sold to give a sum of ₹80,000/- to Mahavir. Though suggestions have been given to the witnesses that Mahavir had borne the litigation expenses of his father-in-law however none of the witnesses have accepted the same and there was no further material to probabalize the said defense of the appellant.

14. In view of the evidence led by the prosecution, offences punishable under Sections 498A/304B IPC have been proved beyond reasonable doubt against Mahavir @ Olanga and even if no action has been taken against friends Bhola and Rajesh, the same does not exonerate Mahavir.

15. Consequently, the impugned judgment of conviction and order on sentence are upheld. Appeal is dismissed. The appellant will undergo the sentence awarded.

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

17. TCR be returned.

(MUKTA GUPTA)
JUDGE

MAY 26, 2016
‘vn’