

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRIMINAL LEAVE PETITION No. 474/2015

% Date of decision : 27th January, 2016

STATE **Appellant**
Through : Ms. Anita Abraham, APP for the State with
ASI Prem Chand, Police Station - Alipur.

versus

SANDEEP KUMAR & ORS. **Respondents**
Through : Ms. Sima Gulati, Ms. Ridhima Gulati, and
Mr. Subro Prokas Mukherjee, Advocates.

CORAM:
HON'BLE MR. JUSTICE G. S. SISTANI
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G. S. SISTANI, J. (ORAL)

1. The present Criminal Leave Petition has been filed under section 378(1) of the Code of Criminal Procedure by the Appellant seeking leave to appeal against the impugned order dated 30.01.2015 passed by the learned Additional Sessions Judge-03/North, Rohini Courts, Delhi in Sessions Case No. 82/13.
2. The material facts relevant and necessary for disposal of the present leave petition are that on 10.04.2008, on receipt of an information, Crime Team went to the house of the respondents and found the deceased Kumud hanging from the roof with a *Duppata*. Statement of Om Prakash, father of the deceased was recorded who disclosed that deceased was married to respondent No. 1/Sandeep on 25.04.2007. On 09.04.2008, he received a phone call from the deceased that she

was being beaten up by her husband and her in-laws and requested him to take her away or she will be killed. On 10.04.2008, he was informed by the police that his daughter Kumud had expired. Om Prakash held various family members responsible for the death of the deceased for non- fulfillment of demand of Rs.5 lakhs as well as a car.

3. After investigation, police filed a charge sheet under Section 498A read with Section 34 of the Indian Penal Code and Section 304B read with Section 34 of the Indian Penal Code and charges were framed against the respondents for the said offences to which they pleaded not guilty and claimed trial.
4. Besides formal witnesses, the prosecution examined PW3 Om Prakash (father), PW7 Kamla (mother) and PW9 Anil Kumar Upadhyay (brother of the deceased) to bring home the guilt of the respondents, who in their statements recorded under section 313 of the Code of Criminal Procedure denied all allegations and claimed to have been falsely implicated in the case.
5. The Trial Court after analysis of the evidence adduced by the prosecution, acquitted the respondents by concluding that prosecution had failed to prove the guilt of the respondents beyond reasonable doubt.
6. Ms. Anita Abraham, learned APP for the State submits that the impugned order is not sustainable in the eyes of law as the same is based on presumption, conjectures and surmises and is liable to be set aside. Learned Counsel further submits that the evidence which surfaced during trial was not properly appreciated.

Learned counsel argued that there is no dispute that Kumud died on 10.04.2008 in her matrimonial home otherwise than under normal circumstances due to “*asphyxia consequent upon ligature and pressure over neck*”. She further contends that there were persistent demands of dowry by the respondents right from the solemnization of the marriage which continued till the date of death of the deceased. She further contends that the respondents had been maltreating, harassing and subjecting her to cruelty for the non fulfillment of their demand of Rs.5 lakhs and a car for dowry. She further contends that the learned Trial Court erred in not appreciating the testimonies of the material witnesses being PW3 Om Prakash (father), PW7 Kamla (mother) and PW9 Anil Kumar Upadhyay (brother of the deceased) in the right perspective and acquitted the respondents on the basis of minor contradictions.

7. Ms. Sima Gulati, learned Counsel for the respondents in support of the impugned order contends that as the prosecution had failed to prove the cruelty or harassment for or in connection with the demand of dowry, the learned Trial Court was justified in acquitting the respondents. She further argued that though the deceased died under abnormal circumstances within seven years of her marriage there was no evidence of any demand for dowry by the respondents or her being subjected to cruelty or harassment by the respondents for or in connection with the demand for dowry. In any event, there was absolutely no evidence that any demand for dowry was made “soon before her death” on 10.04.2008 and the cruelty or

harassment meted out to her in connection with the demand of dowry were the proximate cause of her death.

8. Before we discuss the facts and evidence brought on record, we deem it appropriate to discuss the relevant provisions which are involved in the present case. As observed, the respondents were acquitted under Section 304B of the Indian Penal Code. The said Section reads as under:

304-B - Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation - For the purposes of this Sub-section, "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961). (2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

9. In **Raman Kumar Vs. State of Punjab : (2009) 16 SCC 35**, Hon'ble Supreme Court observed :

"13. The provision has application when death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relatives of her husband for, or in connection with any demand for dowry. In order to attract

application of Section 304B IPC, the essential ingredients are as follows:

- (i) The death of a woman should be caused burns or bodily injury or otherwise than under a normal circumstance.
- (ii) Such a death should have occurred within seven years of her marriage.
- (iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.
- (iv) Such cruelty or harassment should be for or in connection with demand of dowry.
- (v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

14. xxxxxxxxxx

15. xxxxxxxxxxAs per the definition of "dowry death" in Section 304B IPC and the wording in the presumptive Section 113B of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the woman concerned must have been "soon before her death" subjected to cruelty or harassment "for or in connection with the demand for dowry". Presumption under Section 113B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials:

- (1) The question before the court must be whether the accused has committed the dowry death of a woman, (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304B IPC.) '
- (2) The woman was subjected to cruelty or

harassment by her husband or his relatives.

(3) Such cruelty or harassment was for, or in connection with any demand of dowry.

(4) Such cruelty or harassment was soon before her death.

16. A conjoint reading of Section 113B of the Evidence Act and Section 304B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the "death occurring otherwise than in normal circumstances". The expression "soon before" is very relevant where Section 113B of the Evidence Act and Section 304B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led in by the prosecution. "Soon before" is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113B of the Evidence Act. The expression "soon before her death" used in the substantive Section 304B IPC and Section 113B of the Evidence Act is present, with the idea of proximity test. No definite period has been indicated and the expression "soon before" is not defined. A reference to the expression "soon before" used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who is in the possession of goods soon after the theft, is either the thief who

has received the goods knowing them to be stolen, unless he can account for his possession. The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. **There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.**"

10. In **Amar Singh v. State of Rajasthan : (2010) 9 SCC 64**, Hon'ble Supreme Court observed:

"29...What is punishable Under Section 498-A or Section 304-B Indian Penal Code is the act of cruelty or harassment by the husband or the relative of the husband on the woman. It will be also clear from Section 113-B of the Evidence Act that only when it is shown that soon before her death a woman has been subjected by any person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death within the meaning of Section 304-B Indian Penal Code. The act of subjecting a woman to cruelty or harassment for, or in connection with, any demand for dowry by the accused, therefore, must be established by the prosecution for the court to presume that the accused has caused the dowry death."

11. The law as it exists now provides that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within 7 years of marriage and it is shown

that soon before her death she was subjected to cruelty or harassment by her husband or any relative for or in connection with any demand of dowry such death shall be punishable under Section 304B of the Indian Penal Code. In order to seek a conviction against a person for the offence of dowry death, the prosecution is obliged to prove that (a) the death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances; (b) such death should have occurred within 7 years of her marriage; (c) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband; (d) such cruelty or harassment should be for or in connection with the demand of dowry; and (e) to such cruelty or harassment the deceased should have been subjected to soon before her death.

12. Two of the ingredients of Section 304B of the Indian Penal Code are answered in the affirmative as it is not in dispute that firstly the death of the deceased was within seven years of marriage and secondly was otherwise than under normal circumstances. Now, we have to examine, whether the respondents treated the deceased with cruelty or harassment on account of demand of dowry and abetted her in committing suicide and also the cruelty meted out to the deceased so as to provoke her to end her life.
13. In order to prove that the deceased was subjected to harassment and cruelty in connection with demand of dowry “soon before her death”, PW3 in his statement to the SDM stated that he had made a telephone call to his daughter on 09.04.2008 to know about her well being when

she disclosed to him that her husband, in-laws and their relatives had given her beatings and attempted to kill her by pressing her throat on 08.04.2008 and requested him to take her away from her matrimonial house as she feared for her life. He stated that *"Yeh log meri ladki se paanch lakh ve car ki maang karte the, dabav dete the."* On the aspect of demand of dowry, there are material contradictions in the testimony of the witnesses examined by the prosecution. According to PW3, the demand for dowry was made for Rs.5 lakh and a Wagon R Car by the respondents at the time of "*Phera*" and again at the time of "*Vidai*". This demand was made for the third time when PW3 had gone to the matrimonial home of the deceased to bring her. To the contrary, PW9 has given a different version and stated that when the deceased had come for her "*Phera*" to her parent's home, she revealed that the demand was made soon after marriage. He, however, during cross examination voluntarily stated that *"During pheras in the marriage his father told us that accused had given up the said job hoping for better placement."* The version of PW7 is in total contradiction to the testimonies of PW3 and PW9, who have stated that the demand of dowry was made at the time when PW3 had gone to fetch the deceased from her matrimonial home for "*Phera*". PW2 Mahender, neighbour of the respondents stated that he used to visit the house of the respondents frequently but he neither heard nor saw any quarrel between the deceased and Sandeep or with his family members.

14. PW3 Om Prakash in his statement had mentioned that he had spoken to his daughter on 09.04.2008. He deposed that "*On 09.04.2008, I made a telephone call at the matrimonial house of Kumud to know about her well being. Phone was attended by my daughter Kumud. When my daughter received the telephone call, she told me that one day prior to 09.04.2008, her husband, mother in law, father in law and other family members present in the Court today (correctly identified) gave her beatings and attempted to kill her by pressing her throat and told me to bring her to parental house otherwise accused persons would kill her.*" During cross examination, he stated that "*On 08.04.2008, my daughter had informed regarding misbehaviour of accused in the night by telephone between 8-9 pm.*" PW7 deposed that "*on 09.04 but I do not remember the year but it was the year of marriage. We had made a call to our daughter at about 09:00pm then my daughter stated that all the family members had given her beatings because of not fulfilling their demands.*" PW9 categorically deposed that "*On 09.04.2008, one day before her death my father told me that they had received a call from my sister that my sister was attempted to be murdered.*" From the testimonies of PW3, PW7 and PW9, it is clear that these witnesses have contradicted each other and given different timing as to when the phone call was received or made. According to PW3, the call was made by him to the deceased on 10.04.2008 but had to be disconnected as he could not talk to her, there being a lot of noise in the background. PW7 remained silent on the call having been made to the deceased on 09.04.2008 and PW9

denied that there was any telephonic conversation with the deceased. The contradiction in the testimonies of PW3, PW7 and PW9 cannot be regarded as minor, rather they are major for the reason that at the same time, it is also noticed that the Call Details Record Ex.PW18/A in fact depicts that no such call was either made or received by the deceased on 09.04.2008 as deposed by PW3, PW7 and PW9 and the testimonies are unreliable.

15. There are other glaring contradictions and inconsistencies in the testimonies of PW3, PW7 and PW9. According to PW3, the marriage was arranged through a mediator whereas other witnesses have deposed to the contrary. PW3 deposed that *“There was a mediator who got the marriage settled between Kumud and Sandeep. I do not know his name, however he resides in Village Bakhtawarpur. I had gone to the house of accused persons along with Narender Kumar and other persons whose name I do not remember and requested them not to raise dowry demands and not to torture my daughter. Narender Kumar was the President of our Community i.e. Upadhyay Samaj.”* On the other hand, PW7 denied that the marriage of her daughter was settled through a mediator and she deposed that *“There was no mediator present between the marriage of my daughter with accused Sandeep.”* She further deposed that *“I do not know anyone by the name Narender Kumar. It may be correct that he might be the president of our Upadhayaye Community. I am not aware of the fact Narender Kumar accompanied with my husband went to the house of*

sandeep for the meeting.” In view of the contradictions pointed above, it is not possible to rely on these interested witnesses.

16. PW3 deposed that *“On 08.04.2008, my daughter had informed regarding misbehaviour of accused in the night by telephone between 8-9 p.m.. It is correct that on the next day, neither I nor any of my sons visited my daughter. Vol. On 09.04.2008 I along with my son Anil Kumar started from my house to come to the house of my daughter, however there was visit of Ms. Mayawati in Murad Nagar due to election of Sh. Rajpal Singh, MLA and so roads were blocked and when we reached to Delhi it was already night and since it was already 6-7 pm, we returned back to Meerut without visiting the matrimonial house of my daughter.”* and PW9 who categorically stated that *“I did not make any efforts to go to village Bakhtwarpur on 09.04.2008 as I was not in Meerut.”* The testimony of PW3 that on 09.04.2008, his daughter had called him up at night complaining about the behaviour of her in-laws though he had left his house to meet her and he had to return half way because of the traffic jam and that even on the next day, he and his sons never visited his daughter makes the case of the prosecution doubtful. Had it been true, come what may, the father of the deceased would have made it to the house of her daughter even if he had reached after waiting for long hours in the traffic jam.
17. According to PW3, PW7 and PW9, injury marks were seen by them on the dead body of the deceased. The testimonies of these witnesses have been falsified by that of PW16 Dr. K. Goel who conducted the

postmortem on the dead body of the deceased and observed that no external injury was found on the dead body of the deceased.

18. As per the version of PW3, he met the Sub Divisional Magistrate at the spot and went inside the room of the deceased whereas PW4 A. K. Verma, SDM deposed that “I reached at the spot within half an hour. I remained at the spot for about 15-20 minutes. During which no relatives of deceased met me.” Moreso, the statement of PW3 was recorded in the mortuary from which it is clear that PW3 was not present at the scene of occurrence.
19. From the evidence on record, it has emerged that the deceased and her husband were taking counselling from VIMHANS Hospital from Dr. John Victor, Clinical Psychologist. His report is Ex.PW23/A as per which the father of the deceased had attended the counselling session along with father in law of the deceased and they had decided to separate the couple and to take divorce by mutual consent. PW23 in his report Ex.PW23/A wrote that “On 7th Friday March, 2008, both the couple along with their parents came for the Session. In which I explained that this marriage may not become successful and asked both the parents to discuss and take a decision. After the discussion, the girl’s father and boy’s father decided to take (Sic, divorce by) mutual consent and separate the couple.” PW3 and PW7 have denied that the deceased and her husband were going for counselling sessions.
20. There is no explanation that though the family members were available since the date of incident why the statements of PW3

(father) and PW7 (mother) of the deceased under Section 161 of Code of Criminal Procedure were recorded after a gap of two months. Even the statement of PW9 (brother of the deceased) was recorded after a fortnight. The family members of the deceased also had ample opportunity and time to approach the senior authorities for redressal of their grievance. No explanation having come forth, a doubt is cast in the story of the prosecution.

21. The testimonies of the witnesses, showing several contradictions, have already been projected hereinabove, would go to show that their testimonies do not inspire confidence in its truthfulness and correctness and cannot be relied upon.
22. Resultantly, we have no hesitation in holding that the case of the prosecution must fail. We do not find any reason to interfere with the impugned judgment passed by learned Trial Court. Accordingly, present leave petition being devoid of merit is dismissed.

G. S. SISTANI, J

SANGITA DHINGRA SEHGAL, J

JANUARY 27, 2016

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