

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment delivered on : January 30, 2017

+ CRL.A. 341/2000
MUKESH KUMAR Appellant
Through: Mr. D.K. Mathur, Advocate

versus

STATE Respondent
Through: Mr. Panna Lal Sharma, Additional
Public Prosecutor for the State

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

JUDGMENT

P.S.TEJI, J.

1. Aggrieved by the judgment of conviction dated 30.05.2000 passed by the Learned Additional Sessions Judge, Delhi, whereby appellant has been convicted for the offence under S. 498 A of the Indian Penal Code (hereinafter referred to as I.P.C) and vide order on sentence dated 02.06.2000 has been sentenced to undergo rigorous imprisonment for a period of two years with fine of Rs.15,000/- for the offence under Section 498-A of IPC and in default of payment to further undergo rigorous imprisonment for eight months, the appellant has filed this present criminal appeal.

2. The facts of the case, as emerging from the record are that on 24.06.1997, wife of the appellant – Seema had consumed baygon spray. Her son – Darpan went to the neighbourhood and informed one Sunil about something abnormal which had happened to his mother.

Sunil reached the house and found Seema lying in a semi-conscious condition. There was nobody present at that time in the house. He took Seema to GTB Hospital, Shahdara and got her admitted therein. At that time, she was conscious and oriented but by the time police reached, she was declared to be unfit for statement. Her parents were informed. The victim Seema was declared fit for statement at 12.35 PM on 26.06.1997. Thereafter she appeared before the SDM, Seemapuri on 27.06.1997 at about 3 PM and made a statement, wherein she stated that she was harassed and ill-treated by her husband, father-in-law and mother-in-law for dowry. She alleged that there were constant demands of dowry from the appellant and his parents and since she could not fulfil the demands, she was beaten and ill-treated. Not only this, she has also alleged criminal intimidation and alleged that she was forcibly made to write a suicide note. She narrated that on the date of the incident, her hands were caught by her father-in-law and mother-in-law while her husband made her drink a glass full of baygon spray. On her statement, the instant case was registered. During the course of investigation, the appellant and his parents were arrested.

3. The FIR was registered under Section 498-A/307/506/404/34 of IPC, but after completion of investigation, charges under Section 498-A/34, 506 Part II/34, 406/34 and 307/34 of IPC were framed against the appellant as well as his parents, to which they pleaded not guilty and claimed trial.

4. To substantiate the charge, the prosecution has examined 12

witnesses namely; Shri S.R. Kataria, then SDM (PW-1); Smt. Anokhi Devi (PW-2); Head Constable Santosh Kumari (PW-3); Constable Pramod Kumar (PW-4); Head Constable Rajeshwar (PW-5); Babu Singh Rajora (PW-6); Smt. Seema (PW-7); Dr. B.D. Singh (PW-8); Dr. K.M. Aggarwal (PW-9); ASI Tej Pal Singh (PW-10); Sub-Inspector Rattan Singh (PW-11) and K.S. Chhabra (PW-12). Thereafter, entire incriminating material on record was put to the appellant and his parents, and their statements under Section 313 of Cr.P.C. were recorded, in which they specifically denied the charges and claimed trial. In their defence, 9 witnesses were examined.

5. After considering the facts, evidence led and the material on record, the learned Additional Sessions Judge held the appellant guilty for an offence punishable under Section 498-A of IPC vide judgment and order on sentence, as mentioned above and parents of the appellant were acquitted of all charges. Now the present appeal has been preferred by the appellant to challenge the impugned judgment and order on sentence on the following grounds.

6. Learned counsel for the appellant has submitted that the allegation in the present case are that the Seema (PW-7) had consumed Bygon spray due to maltreatment of his husband and in-laws, however, the document Ex.PW-8/A Narrates that it was a case of intake of Baygon spray by the patient herself. It is the next submission on behalf of the appellant that on the one hand the learned Trial court disbelieved the testimony of complainant and her parents on various occasions, and acquitted the appellant as well as his parents from the

charges under Section 307/506/406 of IPC, but the appellant has been held guilty for an offence under Section 498A of IPC. It is further submitted that once the trial court had itself observed that the complainant had presented a fabricated story of attempt to kill her and still the letters Ex.PW-7/A and PW-7/B written by the complainant are believed to be true and genuine one. Even when the parents of the complainant - Smt. Anokhi Devi (PW-2) and Babu Singh (PW-6) were recalled by the SDM, they did not depose anything regarding the letters Ex.PW-7/A and PW-7/B dated 05.06.1997 and 07.06.1997. Moreover, the letter (mark -7/DA), written by the complainant to her father after one and half years of her marriage specifically mentions that *“aap ladki wale hai aapko jhukna chahai aur meri chinta ki koi avashyatka nahi hain mujhe pura sneha mila hai aur main khush hoon.”*, and the learned Trial court has observed that the complainant was facing harassment for the last six years. Even the witness Smt. Seema (PW-7) has admitted that during the period of course of Medical Lab Technology, there was no torture committed by the husband and in-laws. Lastly, it is urged on behalf of the appellant that the demand of dowry has not been established by reliable and convincing evidence and it is settled law that where the demand is not established, there is no harassment and the witness who had been discredited, cannot be believed. Therefore, the appellant be acquitted from the offence under Section 498-A of IPC.

7. On the other hand, learned Additional Public Prosecutor for the State has vehemently opposed the contentions of the appellant and

submitted that the wife of the appellant, Seema, was being harassed and tortured on a continuous basis for dowry demands by the appellant. Therefore, the judgment and order on sentence as passed by learned Additional Sessions Judge do not suffer from any irregularity or illegalities and is passed with a reasoned order; therefore, the same is not liable to be interfered with.

8. I have heard the submissions made on behalf of both the sides and also gone through the evidence as well as material placed on record.

9. PW 7 Seema, wife of appellant deposed in her statement that she married appellant in the year 1991 and upon reaching her matrimonial house, handed over the dowry articles to her in-laws. After about a week of marriage, the in laws of PW 7 started harassing her as they were unhappy with the insufficient dowry she brought with her. PW 7 further deposed that she was constantly beaten and threatened by all family members for demands relating to bringing various articles (Ex PW 7/C) such as fridge, washing machine, and share from the property of her father along with Rs. 50,000/-. PW 7 also mentioned in her deposition that she was asked to bring a sum of Rs.2000/- per month from her parents as she was not working and earning any remuneration. Upon non-fulfillment of the demands, in laws of PW 7 as per her deposition used to occasionally leave her at her parental house. PW 7 further deposed that such harassment continued for a period of 6 years. Thereafter, upon giving birth to a child, at the time of the child's naamkaran ceremony, the in-laws and

husband of PW 7 taunted her for bringing insufficient articles on the birth of her child and her husband beat her for the same. PW 7 further deposed that she was threatened with dire consequences by her in-laws and husband who stated that they would kill her brother and father. She further stated that about 2-3 years ago, her husband forcibly made her write a suicide note by beating her repeatedly. PW 7 further deposed that she wrote some letters to her father with regard to the torture meted out to her and the same have been exhibited as Ex. PW 7/A and 7/B. PW 7 further stated that on 24.06.1997, while working in the kitchen, her father in law and mother in law came in and her husband forcibly poured bagon spray into her mouth after which she turned unconscious. Upon regaining consciousness, PW 7 found herself in the hospital and on 28.06.1997 SDM was called upon and statement of PW 7 was recorded which is Ex. PW 1/A, bearing signature this witness at point-B.

10. PW 2, Smt. Anokhi Devi, who is the mother of Seema (PW-7), corroborates the testimony of Seema. She has stated that whenever PW 7 came to her house, she complained of demand of Rs. 50,000/- and sometimes of a car by her husband and father in-law. Further, she stated that on 24.06.1997, upon receiving a telephonic message she came to know about her daughter being administered poison by her husband and her in-laws, whereafter she reached GTB hospital at 8 pm.

11. PW 6, Sh. Babu Singh Rajora, father of Seema (PW7), has also corroborated the testimony of Seema. He has deposed in his statement

that after about 15 days of marriage of his daughter, she was harassed by her in-laws for bringing insufficient dowry and there was frequent demands of Rs. 50,000/- were made on their part. He further stated that demands of washing machine, fridge and colour TV were also made by the in laws of Seema and upon non fulfillment of the same by this witness, his daughter was tortured and humiliated. This witness has further stated in his deposition that he used to tolerate these atrocities of in-laws of his daughters. He further went on to depose that after 15 days of marriage, his daughter was sent back to his house with some unknown neighbor.

12. From the aforesaid deposition of the material witnesses, i.e., the victim - Seema (PW-7), father of complainant – Babu Singh Rajora (PW-6) and mother of the complainant – Anokhi Devi (PW-2), this court observes that there are specific allegations of the complainant (PW-7) to the effect that after her marriage she handed over her dowry articles to her in-laws and after one week of her marriage, her in-laws started harassing her and they were not happy with the dowry articles which were given in the marriage. It is also clear from the deposition of the complainant that she was asked to bring fridge, washing machine and share from the property of her father apart from demand of Rs.50,000/- for her job. The said deposition is also corroborated by the deposition of PW-6 and PW-2.

13. In view of the aforesaid discussion, this court observes that there was constant and continuous harassment and torture for the demand of dowry by the appellant herein. Accordingly, a cumulative

effect of the evidence regarding demand of dowry satisfies the ingredients of Section 498A with respect to cruelty and harassment for demand of dowry. Therefore, in the considered opinion of this court, the impugned judgment dated 30.05.2005 passed by learned Additional Sessions Judge is upheld thereby convicting the appellant for the offence under Section 498A of IPC.

14. So far as the order on sentence, this court observes that the present case is of the year 1997 and the appellant has been convicted under Section 498-A of IPC and has been sentenced to undergo rigorous imprisonment for a period of two years with fine of Rs.15,000/- vide order dated 02.06.2000 passed by learned Additional Sessions Judge. This court further observes that the appellant had preferred the instant appeal which came up for hearing on 14.06.2000 and the sentence of the appellant was suspended. Nominal roll of the appellant is also on record, according to which he has remained behind bar for a period of 3 months.

15. Considering the fact that the appellant had remained on bail during trial as well as during pendency of the instant appeal and he has already faced the agony of trial of this case for about 20 years, this court is of the considered opinion that in the peculiar facts and circumstances of the present case, the ends of justice would be met if the sentence awarded by the learned Additional Sessions Judge is reduced to the period already undergone by him and the sentence of fine of Rs.15,000/-, in default, rigorous imprisonment for a period of 8 months is modified to sentence of fine of Rs.30,000/-, in default,

simple imprisonment for a period of 6 months. It is ordered accordingly.

16. Resultantly, finding no merit in the present appeal filed by the appellant, the impugned judgment dated 30.05.2000 thereby convicting the appellant – Mukesh Kumar for the offence punishable under Section 498A of IPC is upheld and the appeal filed by the appellant is dismissed. However, on the quantum of sentence, the order on sentence dated 02.06.2000 is modified to the extent indicated above.

17. The appellant is accordingly allowed 15 days time to either deposit the enhanced amount of fine of Rs.15,000/- or to undergo simple imprisonment for a period of six months as in default of payment of fine. Appellant is further directed to place on record the receipt in respect of deposit of the enhanced amount of fine within a week.

18. A copy of this order should be sent to the Trial Court for information and necessary steps.

19. With aforesaid directions, the present appeal is disposed of.

(P.S.TEJI)
JUDGE

JANUARY 30, 2017
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