

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on : January 20th, 2017

+ CRL.A. 422/2000

TILAK RATHORE AND ANR.

..... Appellants

Through: Mr.Ajay Verma, Ms.Divya Chugh,
Advocates.

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. The instant appeal has been filed being aggrieved by the judgment of conviction dated 05.07.2000 passed by the learned Additional Sessions Judge, Delhi convicting the appellants for the offence punishable under Section 498-A/306/34 of Indian Penal Code (hereinafter referred to as I.P.C.), and order on sentence dated 07.07.2000, whereby the appellant – Tilak Rathore has been sentenced to undergo rigorous imprisonment for a period of three years and fine of Rs.1,000/- for the offence under Section 498-A/34 of IPC and in default of payment to further undergo rigorous imprisonment for six months. The appellant was also sentenced to undergo rigorous imprisonment for five years with fine of Rs.2,000/- and in default of

payment of fine to undergo rigorous imprisonment for one year for the offence under Section 306 IPC. As regards appellant – Sangeeta is concerned, she has been sentenced to undergo rigorous imprisonment for a period of two years and fine of Rs.1,000/- for the offence under Section 498-A/34 of IPC and in default of payment to further undergo rigorous imprisonment for six months. The appellant – Sangeeta was also sentenced to undergo rigorous imprisonment for two years with fine of Rs.1,000/- and in default of payment of fine to undergo rigorous imprisonment for six months for the offence under Section 306 IPC.

2. The factual matrix that emerges from the record is that the marriage of deceased Suman was solemnized with the appellant – Tilak Rathore on 30.04.1998 and after about six months, on 11.01.1999, she was found to be hanging from the ceiling fan. An information with this respect was recorded vide DD No.7A (Ex.PW-9/A). Sub-Inspector Ravi Kumar alongwith constable Maman Singh went to the spot and found from the window of the room that one lady was hanging with ceiling fan with a rope. The said room was bolted from inside. SDM was informed by Sub-Inspector Ravi Kumar. Door of the room was forcibly opened and place of occurrence was photographed and the spot was inspected by the crime team. Dead body was brought down from the ceiling fan, inquest proceedings were completed by the SDM and accordingly FIR (Ex.PW-8/A) was registered. SDM recorded the statements of the parents of deceased. It was stated that the deceased was being harassed and tortured by both

the appellants due to which the deceased had committed suicide. Appellant – Tilak Rathore was arrested and appellant – Sangeeta was formally arrested, as she had obtained anticipatory bail in the case.

3. After completion of investigation, charge sheet was filed in the court. Charge under Section 498-A and 306 read with Section 34 of IPC was framed against both the accused, to which they pleaded not guilty and claimed trial.

4. To bring home the guilt of the appellants, the prosecution examined as many as 9 witnesses. They are father of deceased-Nanhe Rathore (PW-1); mother of the deceased-Smt. Sheela (PW-2); Constable Hans Raj (PW-3); Mr. Attar Singh Dabas, SDM (PW-4); Dr. L.C. Gupta, Police Mortuary (PW-5), Sub-Inspector Mohar Singh, Crime Team (PW-6); Constable Maman Singh (PW-7); Head Constable Bishamber Singh (PW-8), and Sub-Inspector Ravi Kumar (PW-9).

5. The statements of the appellants were recorded under Section 313 of the Cr.P.C. and the appellants have examined two witnesses in their defence, i.e., Mr. Ramesh Chand (DW-1) and Ms. Manju (DW-2).

6. After considering the facts, evidence led and the material on record, the learned Additional Sessions Judge held the appellants guilty for an offence punishable under Section 498-A/306/34 of IPC vide judgment and order on sentence, as mentioned above.

7. The appellants have filed the instant appeal challenging the

aforesaid judgment on conviction as well as order on sentence. During pendency of the present appeal, the sentence imposed upon the appellants was suspended vide order dated 07.08.2000.

GROUND OF CHALLENGE

8. There are material contradictions between the main witnesses i.e., father and mother of the deceased. There is no mention of demand for dowry, nor is there mention of any physical beating in the FIR. While recording FIR it was stated by father of the deceased that before marriage Rs.25,000/- was demanded from the side of the groom and the same was fulfilled. It is further urged that PW-1 and PW2 have made two inconsistent statements regarding giving sum of Rs.25,000/-. All the allegations regarding demand for dowry and physical beating were leveled in the court despite the fact that there is no specific allegation in the FIR. It is further contended that the witnesses produced on behalf of the appellants have clearly stated that they never saw and heard about demand for dowry or beating or deceased being turned out of the house of the appellants, but the learned trial court had rejected their evidence. No cruelty has been proved as there is no specific allegation of demand for dowry, therefore the question of presumption under Section 113-A of the Indian Evidence Act will not arise.

9. In support of his submissions, learned counsel for the appellants relies upon the judgments of the Supreme Court in Criminal Appeal Nos.1138-39/2016, titled as *K.V. Prakash Babu vs. State of*

Karnataka, decided on 22.11.2016; Sakharam and Another vs. State of Maharashtra, (2003) 12 SCC 368.

10. Per contra, learned Additional Public Prosecutor for the State has submitted that the deceased Suman had died otherwise than under normal circumstances in her matrimonial home and that too within seven years of her marriage; the deceased was being harassed and tortured by both the appellants; there was demand of Rs.25,000/- from the side of in-laws at the time of marriage and that was given by the father of the deceased. It was due to harassment and cruelty on account of demand of dowry which led to the taking of extreme step of ending her life by the deceased. Therefore, the judgment and order on sentence as passed by learned Additional Sessions Judge does not suffer from any irregularity or illegality.

11. Arguments advanced by both the sides were heard and the evidence as well as material placed on record has been gone into.

12. Nanhe Rathore (PW-1), who is father of the deceased has specifically deposed that his daughter married with the appellant – Tilak Rathore on 30.04.1998. At the time of marriage a demand of Rs.25,000/- was made by the husband of appellant – Sangeeta and the said amount was paid by him to the appellant-Sangeeta. Apart from that, he also gave dowry articles in the marriage. After 2-3 months before the death of his daughter, the appellants started harassing her and she occasionally complained to him that the appellants were demanding money and other dowry articles and used to give beating to

her. He has specifically deposed that the appellant – Tilak Rathore used to give beating to his daughter and the appellant – Sangeeta used to harass and torture his daughter. Further, he deposed that about one week before the death of his daughter, he went to the house of his daughter when his daughter informed him while weeping, that both the appellants and other members of the family were harassing her and she compelled him to take her to his house. On 11.01.1999, some persons came to his house and informed about the death of his daughter. He further deposed that at about 8 AM, he went there and found that his daughter was hanging from the ceiling fan and was dead. He also gave his statement before the SDM (Ex.PW-1/A) and identified the dead body of his daughter. He deposed in his deposition that a sum of Rs.25,000/- before marriage of his daughter, was given in the hands of Hargovind, i.e., husband of the appellant – Sangeeta.

13. Testimony of PW1 has duly been corroborated by Smt. Sheela (PW-2), the mother of the deceased. PW2 has deposed that they had given Rs.25,000/- in cash and other articles in marriage of her daughter. For 3-4 months her daughter was kept properly but thereafter, both the appellants started harassing and torturing her daughter and also started giving beating to her. They used to ask her daughter to bring money from her parents and they also taunted her by saying that her parents have not given anything in the marriage. She further deposed that about 10-12 days before the death of her daughter, her father went to the house of her daughter, where she told her father to take her from there to his house as the appellants were

harassing and torturing her. She further deposed that her daughter told about the fact that the appellant-Tilak used to go to appellant-Sangeeta first after coming from his office.

14. Testimony of above two witnesses has been corroborated by Dr. L.C. Gupta, (PW-5) who had conducted the post mortem on the body of the deceased Suman. He deposed that the deceased was averagely built and nourished, rigor mortis was present. Post Mortem staining was present as bilateral globins and stockings. Ligature material, a rope in two layer with running noose was present around neck in its upper part, was cut from opposite side of noose and preserved for CFSL Purpose. He has given the cause of death as being 'asphyxia resulting from hanging'. Time since death was opined to be 36 hours prior to post mortem examination.

15. From the aforesaid narrations of depositions of material witnesses PW-1 and PW-2, it is apparent that there was a demand of Rs.25,000/- at the time of marriage from the appellant's side, which was given by the father of the deceased and for proving a case under Section 498-A such a demand shall suffice immaterial as to whom the dowry demand was paid to. It has also come in their testimony that the deceased was constantly taunted and harassed on account of demand of dowry and she was also given beatings by the appellants in that regard. Therefore, the offence under Section 498-A is proved against the appellants.

16. The Hon'ble Supreme Court in *Chitresh Kumar Chopra v.*

State (Govt. of NCT of Delhi) (2009) 16 SCC 605 had an occasion to deal with this aspect of abetment and opined that there should be an intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the other. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

17. In criminal jurisprudence, every case can be distinguished on its own facts and there cannot be any straitjacket formula to decide as to whether in some case the offence under Section 306 IPC has been committed or not. Coming to the facts of the present case, PW-1 has specifically stated in his statement recorded before the court that after 2-3 months before the death of his daughter the appellants started harassing her and she usually complained to him that the appellants were demanding money and other dowry articles and used to give beating to her. He has specifically deposed that the appellant – Tilak Rathore used to give beating to his daughter and the appellant – Sangeeta used to harass and torture his daughter. Further, he deposed that about one week before the death of his daughter, he went to the house of his daughter when his daughter told him while weeping, that both the appellants and other members of the family were harassing her and she compelled him to take her to his house.

18. Mother of the deceased (PW-2) has also corroborated the statement of Nanhey (PW-1) while deposing that for 3-4 months her

daughter was kept properly but thereafter, appellant – Tilak and Sangeeta started harassing and torturing her daughter and also started giving beatings to her. They used to ask her daughter to bring money from her parents and they also taunted her by saying that her parents had not given anything in the marriage. She further deposed that about 10-12 days before the death of her daughter, her father went to the house of her daughter, where she told her father to take her from there to his house as the appellants were harassing and torturing her.

19. Dr. L.C. Gupta, (PW-5), who had conducted the post mortem of the deceased, has also given the cause of death as being ‘asphyxia resulting from hanging’, which itself confirms the unnatural death of the victim.

20. Though minor contradictions in the depositions are highlighted on behalf of the appellants, they are not material to the facts of the present case and are not sufficient to demolish the prosecution case regarding harassment of the deceased on account of bringing insufficient dowry and demand for dowry.

21. More so, this court is conscious of the fact that the death of the victim was unnatural and such death had occurred within seven years of her marriage and that too in her matrimonial home. It is also a fact that appellant – Sangeeta was also residing alongwith the family of appellant – Tilak. Therefore, Section 34 also applies to the facts of the present case.

22. A cumulative consideration of the evidence regarding demand

for dowry at the time of marriage satisfies the ingredients of charge qua the appellants. Hence, the prosecution has successfully proved the ingredients of Section 498-A of IPC beyond reasonable doubt. The testimony of parents of the deceased i.e. PW1 and PW2 clearly proves that the deceased was constantly harassed and meted out with cruelty on account of demand of dowry. They have specifically stated that about a week prior to the death of the deceased, the deceased informed them that the appellants were harassing and torturing her which was on account of demand of dowry. It was due to such a harassment and torture which led to the taking of extreme step of ending her life by the deceased and the evidence and material brought on record is sufficient to bring home the guilt of the appellants within the four corners of Section 306 of IPC.

23. In the light of the aforesaid discussions, facts and circumstances of this case, this court does not find any illegality or infirmity in the impugned judgment dated 05.07.2000 thereby convicting the appellants for the offence punishable under Section 498-A/306/34 of IPC. Resultantly, finding no merit in the contentions raised on behalf of the appellant, the impugned judgment dated 05.07.2000 is upheld.

24. So far as order on sentence is concerned, this court finds the nominal roll of the appellant – Tilak Rathore on record which shows that he has undergone a period of 1 year, 8 months and 23 days with remission of 15 days. Considering the fact that the incident in question is of the year 1999 and the appellants have faced the agony of trial for about 18 years, and the fact that the appellant-Tilak Rathore had

already served a sentence of more than 1 year 8 months and the fact that the appellant-Sangeeta who has also been convicted for the offences punishable under Section 498-A/306/34 of IPC and has been sentenced to undergo rigorous imprisonment for two years for the offence under Section 306 IPC, therefore in the considered opinion of this court it would be appropriate to reduce the period of sentence imposed upon the appellant-Tilak Rathore to the period of three years for the offence under Section 306 of IPC. Accordingly, the order on sentence dated 07.07.2000 is modified to the extent indicated above.

25. In view of the aforesaid discussion, the present appeal is disposed of while upholding the judgment of conviction for the offence under Section 498-A/306/34 of IPC, however, modifying the order on sentence thereby reducing the sentence of the appellant-Tilak Rathore to the period of 3 years for the offence under Section 306 IPC.

26. The appellants are directed to surrender before the trial court concerned within a period of 15 days to serve the remainder of sentence of imprisonment.

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

(P.S.TEJI)
JUDGE

JANUARY 20, 2017
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