

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on : May 25, 2017

+ CRL.A. 239/2002

SOHAN LAL Appellant
Through Mr.Rohit Minocha, Adv. with
Mr.Chaitanya, Adv.

versus

STATE N.C.T. OF DELHI Respondent
Through Mr. Kewal Singh Ahuja, APP for the
State
Inspt.Rajeev Yadav, PS Inderpuri.

WITH

+ CRL.A. 189/2002

RUKMA DEVI Appellant
Through Mr.Rohit Minocha, Adv. with
Mr.Chaitanya, Adv.

versus

STATE N.C.T. OF DELHI Respondent
Through Mr. Kewal Singh Ahuja, APP for the
State, Inspt.Rajeev Yadav, PS
Inderpuri

AND

+ CRL.A. 651/2002
RAJESH KUMAR

.....Appellant
Through Mr.Rohit Minocha, Adv. with
Mr.Chaitanya, Adv.

versus

STATE (NCT OF DELHI) Respondent
Through Mr. Kewal Singh Ahuja, APP for
the State, Inspt.Rajeev Yadav, PS Inderpuri.

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

JUDGMENT

P.S.TEJI, J.

1. Since all the three appeals have been preferred against the common judgment and order on sentence passed, they are being decided by this common judgment.

2. The instant appeals have been filed being aggrieved by the judgment of conviction dated 28.02.2002 passed by the learned Additional Sessions Judge, Delhi convicting the appellants for the offence punishable under Section 498A/34 and Section 306/34 IPC, and order on sentence dated 04.03.2002. All the appellants were sentenced to undergo imprisonment under Section 498A IPC for a period of two years each with a fine of Rs.500/- each and in default of fine, to further undergo simple imprisonment for one month each. Appellant Sohanlal along with appellant Rajesh were further sentenced to undergo imprisonment under Section 306 for a period of five years and further a fine of Rs.2,000/- each and in default further simple imprisonment of 6 months. Appellant Rukma, with respect to offence under Section 306 IPC, was sentenced to undergo imprisonment for a period of two years and a fine of Rs.1,000/- and in

default one month simple imprisonment.

3. The factual matrix that emerges from the record is that the deceased Sandhya was married with the appellant Rajesh Kumar on 02.04.1982 and subsequently two children were born out of this wedlock. Initially, the behavior of all accused persons was fine with respect to the deceased but thereafter, they started demanding money and the father of the deceased, Devi Lal (complainant in the present matter) gave Rs.70,000/- but there was further demand of Rs.50,000/-. On 05.09.1998, the father of the deceased received a telephone call from the accused Rajesh informing him that his daughter Sandhya was feeling suffocated and was further informed that he was calling from Janki Das Hospital. Father of the deceased thereafter reached the hospital and found his daughter lying on a stretcher, with her body covered with a cloth. He removed the cloth to find that froth was coming out of his daughter's mouth and returned to his house. After 3-4 days he went to the police station Inder Puri and lodged a complaint.

4. After completion of the investigation, charge sheet was filed in the Court. The trial court framed the charge under Section 498A/306/34 of IPC against all accused persons, namely – Rajesh Kumar, Sohan Lal and Rukma Devi to which they pleaded not guilty and claimed trial.

5. To bring home the guilt of the appellants, the prosecution examined as many as 10 witnesses. They are Dr. Alexander F. Khakha (PW-1); Devi Lal (PW-2); Geeta Devi (PW-3); Roshan Lal

(PW-4); V. Venugopal (PW-5), HC Ganesh Das (PW-6); HC Manjeet Singh (PW-7); Ramesh Kumar (PW-9) and SI Juggu Ram (PW-10).

6. The statement of the appellants was recorded under Section 313 of the Cr.P.C in which they claimed innocence. The defence in order to prove its case, examined two witnesses DW1- Shanti Devi and DW2- Ramdhan.

7. 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 498A/34 and 306/34 of IPC vide judgment and order on sentence, as mentioned above. Aggrieved by such judgment, the appellants have filed the instant appeal challenging the impugned judgment on conviction as well as order on sentence.

8. During pendency of the present appeal, the sentence imposed upon the appellants was suspended vide order dated 18.03.2002 (Rukma Devi) and 28.10.2002 (Rajesh Kumar) while the third appellant Sohan Lal was granted bail vide order dated 11.07.2002.

9. The impugned judgment of conviction has been challenged on the ground that no proper appreciation of material on record has been made by the Trial Court. That the father of the deceased and the brother of the deceased both had not complained about deceased being subjected to harassment or cruelty on account of demand of dowry. No cruelty has been proved as there is no specific allegation of demand for dowry. The ingredients of presumption as provided under

Section 113A of the Evidence Act have not been fulfilled in the present case inasmuch as the date of marriage was in 1982 and the deceased died in the year 1998 i.e. after a span of seven years of her marriage.

10. Per contra, learned Additional Public Prosecutor for the State has submitted that the deceased Sandhya had died otherwise than under normal circumstances in her matrimonial home. The deceased was being harassed and tortured by the appellant as evident from the testimony of her relatives in the Court. It was due to harassment and cruelty 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 do 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. Devi Lal (PW-2), who is father of the deceased, has specifically deposed that his daughter Sandhya was married with accused Rajesh on 02.04.1982 and was subsequently blessed with two children from the said wedlock. Within a few years into the marriage, the accused mother and father in laws of the deceased started demanding money from her and this witness stated that he paid Rs. 70,000/- in total, on different occasions. On 05.09.1998, this witness received a telephone call from the accused Rajesh stating that his daughter was feeling suffocated and had been admitted to a hospital. On reaching the said

hospital this witness found his daughter's body lying on a stretcher outside the hospital and covered with a cloth, on removing which he saw that froth was coming out from her mouth. This witness after a few months lodged a report (Ex.PW2/A) in the police station Inderpuri. This witness has further deposed that before the death of his daughter, she had visited him at his house and told him that her in-laws and husband were demanding Rs.50,000/- to which he said that he did not have the courage to pay the said amount. His daughter subsequently left his house in a crying state mentioning that her in-laws would kill her.

13. Geeta Devi (PW-3), mother of the deceased Sandhya corroborated the testimony of PW2. She had deposed in her testimony that her daughter had come to visit her a day prior to her death and informed her that her mother in law was demanding Rs. 50,000/-. This witness told the deceased that she would be unable to give her the said amount of money, hearing which her daughter left her house. PW 3 also stated that on various occasions she used to give her daughter some money to give to her in-laws.

14. Roshan Lal (PW-4) is the brother of the deceased who has also corroborated the testimony of PW2 and PW3. PW4 had stated that his elder sister was not very happy with her marriage as accused Rajesh used to threaten them to take her back as she did not know how to cook. This witness stated that he was not present at the house when deceased Sandhya came visiting a day prior to her death, but was informed by his parents that she had requested them to give her

Rs.50,000/- which her in-laws were demanding from her. The next day his father received a phone call wherein they were informed that Sandhya was not keeping well.

15. Ramesh Kumar (PW-9), brother of deceased Sandhya also deposed on similar lines as PW 2, 3 & 4 in as much as that Sandhya had frequented their house and requested for money to help her as the same was being demanded by her in-laws and husband. This witness has stated that Rs.70,000/- in small amounts, on different occasions was given to her in order to pass it on to her in-laws and husband who were torturing her for the same.

16. From the aforesaid narrations of depositions of material witnesses PW-2, PW-3, PW-4 and PW-9, it is apparent that there were specific demands of money from the deceased by all the accused persons and the same was narrated by her to her father, mother and brothers. It has also come in their testimony that the deceased was not happy in her marriage and was constantly harassed on account of demand of dowry. Further, a day prior to her death the deceased had visited her parental home to seek help from her parents with respect to the demand of Rs.50,000/- from her matrimonial home, failing which she stated that her in-laws and husband would kill her. It has also come in the testimony of these witnesses that the parents of the deceased had already given a total sum of Rs.70,000/- to the appellants though on different occasions.

17. A cumulative consideration of the evidence regarding demand

for dowry 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. PW2 and PW3 along with her brothers PW-4 and PW- 9 clearly proves that the deceased was constantly harassed and meted out with cruelty on account of demand of dowry. They have specifically stated that a day prior to the death of the deceased, the deceased informed them that the appellants were demanding Rs.50,000/- on account of demand of dowry, failing which they would kill her. The evidence and material brought on record is sufficient to bring home the guilt of the appellants within the four corners of Section 498A of IPC.

18. Coming to the conviction of all the accused persons under Section 306 IPC, it would be compelling to reproduce Section 113A of the Indian evidence Act herein :

113A. Presumption as to abetment of suicide by a married woman.—When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

19. A bare reading of Section 113A of the Evidence Act provides that abetment of suicide by a married woman shall be deemed to be presumed wherein, primarily, the suicide has been committed by the

married woman within a period of seven years from the date of marriage. On existence and availability of the said circumstances, that is (i) the woman has committed suicide, (ii) such suicide has been committed within a period of seven years from the date of her marriage, (iii) the husband or his relatives had subjected her to cruelty, the court may presume that such suicide had been abetted by her husband or by such relatives of her husband.

20. As per the facts of the present case, the deceased Sandhya got married with accused Rajesh on 02.04.1982 and died on 05.09.1998. The date of death of the deceased is clearly beyond the period of seven years from the date of her marriage and this alone would fail to attract the scope of Section 113A of the Evidence Act and, therefore, the charge and conviction under Section 306 IPC shall not hold good either. In the absence of this vital link of “within a period of seven years from the date of marriage”, the mere fact that there is a finding of harassment would not lead to the conclusion that there is “abetment of suicide”.

21. In the light of the aforesaid discussions, facts and circumstances of this case, the present appeal is partly allowed. The conviction of the three accused namely Sohan Lal, Rajesh Kumar and Rukma Devi is upheld with respect to Section 498A/34 of the IPC.

22. However, as discussed above, the conviction and order on sentence awarded to the appellants under Section 306/34 of the IPC are set aside.

23. So far as order on sentence is concerned, considering the fact that the incident in question is of the year 1998; the appellants have faced the agony of trial for about 19 years, and further that conviction under Section 306 IPC has now been turned down by this court, it would be appropriate and in the interest of justic to reduce the period of sentence imposed upon the appellants to the period already undergone by them.

24. In view of the aforesaid discussion, the present appeal filed by the appellants is partly allowed to the extent indicated above and is disposed of as such.

MAY 25, 2017
dd

(P.S.TEJI)
JUDGE

