

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

Judgment Reserved on: August 28, 2017

% *Judgment Delivered on: September 11, 2017*

+ **CRL.A. 282/2002**

MOHD. ASLAM & ORS. Appellants

Through: Mr.S.P.Singh Chaudhari,
Mr.Y.R.Sharma, Advocates
with Appellants in person.

versus

STATE (NCT OF DELHI) Respondent

Through: Mr.Kewal Singh Ahuja, APP
for the State with SI Jitender,
PS Model Town

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT

1. The appellants Mohd.Aslam, Mohd.Arif, Mohd.Ashraf & Smt.Parveen have preferred the instant appeal challenging the judgment dated 13th March, 2002 and order on sentence dated 14th March, 2002 passed in Sessions Case No.246/1996 whereby they have been convicted for committing the offence punishable under Sections 304-B/498-A/34 IPC and sentenced as under:

- (i) U/S 304-B/34 IPC to undergo RI for seven years.
- (ii) U/S 498-A/34 IPC to undergo RI for three years with fine of ₹5000/- each and in default of payment of fine, to undergo SI for six months.

Both the sentences were ordered to run concurrently.

2. The appellants before this Court are three brothers-in-law i.e. two *jeth* and one *devar* and one sister-in-law i.e. *jethani* of deceased Shakila. The mother-in-law of the deceased had already expired during trial.

3. All the appellants were charged for the offences punishable under Section 304B/498A/34 IPC on the basis of the statement Ex.PW-2/A made by PW-2 Sh.Saiyed Ahmed, father of the deceased, before the SDM on 5th November, 1995.

4. In the complaint Ex.PW2/A, PW-2 Sh.Saiyed Ahmed stated that his daughter Shakila got married to Anwar on 26th May, 1995 and the venue was in front of A-76, Bada Bagh. Just after four days of the marriage, the mother-in-law, her sons and other family members started demanding dowry and giving beating to his daughter for which a Panchayat was held three-four months prior to her death. The mother-in-law of the deceased used to make her do the entire household work and also to serve her as her *jethani* had served her for ten years. The mother-in-law used to ask Shakila to bring scooter, fridge and money from her parental home. She was harassed by her *jeth-jethani*. He suspected the hand of her *jeth*, *jethani*, *devar* and mother-in-law behind her death. The mother, brother and *bhabhi* of the deceased also made statement before the SDM on the same day. On the basis of interim order Ex.PW-5/A made by the SDM, FIR No.481/1995 Ex.PW5/B was registered under Section 304B/498A/34 IPC at PS Model Town and investigation was handed over to SI Ram Sunder. The body was sent for postmortem and after completion of

investigation, all the appellants and the mother-in-law (deceased) were sent to face trial.

5. During trial, since all the accused persons pleaded not guilty to the charge, prosecution examined nine witnesses to bring home guilt. The appellants were examined under Section 313 CrPC to explain the incriminating evidence appearing against the appellants. In their statement under Section 313 CrPC, the appellants have denied the prosecution case and submitted that they were living separately and the deceased alongwith her husband and mother-in-law was living separately. There was no dowry demand either at the time of marriage or thereafter. The appellants have examined Sh.Anwar – husband of the deceased as DW-1 and Sh.Sabir Ali – resident of the same area as DW-2 in their defence.

6. After trial, the learned Trial Court held all the appellants guilty for the offence for which they had been charged and sentenced in the manner stated above.

7. Mr.S.P.Singh Chaudhari, Advocate for the appellants has submitted that this is a case where all the appellants were living in their separate houses. They had nothing to do with the family affairs of the deceased and her husband. It has been contended that the deceased was leading a happy matrimonial life with her husband which fact has been admitted by PW-1 Smt.Anisa Begum – mother, PW-2 Sh.Saiyed Ahmed – father, PW-3 Smt.Khurshid – *bhabhi* and PW-4 Sh.Farooq – brother of the deceased. The husband of the deceased Shakila was also so much in love with her that on hearing her death, he attempted to commit suicide and is dead now.

8. Learned counsel for the appellants has submitted that this is a case where admittedly there was no dowry demand at the time of marriage. Shakila committed suicide within six months of the marriage and during that period of six months no complaint was ever made against any family member for any alleged dowry demand being made by them. The Panchayat was held at their (appellants) instance as when Shakila went to her parents house, she consumed some tablets and attempted to commit suicide after fight with her brother Sh.Farooq (PW-4) and not because of any dowry demand by the appellants. It has been contended that admittedly all the accused persons were living separately with their family and settled in their respective houses. Even if it is assumed that there was a dowry demand, it was attributed to the mother-in-law by PW-1 to PW-4. The appellants could not have been beneficiary of scooter and fridge allegedly demanded as it would have remained in the house where the deceased was living i.e. in her matrimonial home. Learned counsel for the appellants has contended that merely because Shakila has committed suicide within six months of marriage, the appellants who are brothers of her husband and one *jethani*, could not have been held responsible for her unnatural death as there is absolutely no evidence to prove that she was ever harassed or treated with cruelty by them to fulfill the alleged dowry demands.

9. Mr.Kewal Singh Ahuja, learned APP for the State while supporting the reasoning given by the learned Trial Court to hold the appellants guilty for commission of offence under Section 304B/498A/34 IPC submitted that a young bride had died an unnatural

death in less than six months of marriage. She had absolutely no complaint against her husband and was happily living with him. The circumstantial evidence and the statement of her father, mother, brother and *bhabhi* is sufficient to prove not only the dowry demand made by the appellants but also that she was harassed to the extent that she had no option but to put an end to her life, hence the appeal may be dismissed.

10. I have considered the rival contentions and carefully gone through the record.

11. Since in a case of dowry death, the parents/close family members are the witnesses to prove the dowry demand and the harassment being caused to the deceased for non-fulfillment of the dowry demand, it has become necessary to refer to the statement of PW-1 Smt.Anisa Begum – mother, PW-2 Sh.Saiyed Ahmed – father, PW-3 Smt.Khurshid (*Bhabhi*) and PW-4 Sh.Farooq (brother).

12. PW-1 Smt.Anisa Begum – mother of the deceased Shakila has stated that mother-in-law (since expired) of her daughter Shakila was demanding scooter and fridge and her daughter was given beating by her mother-in-law. In her cross examination, PW-1 Smt.Anisa Begum further clarified that her grudge was only against the mother-in-law of Shakila who used to ask Shakila to serve her till 1.00 am. During her cross examination, she admitted that the family of the accused persons owned two hotels and Anwar Ahmed – her son-in-law used to look after the hotel at Shadipur Depot and that no demand for dowry was made before the marriage. Her son PW-4 Farooq was working as Compounder and used to keep medicines at home. She admitted that

her daughter consumed harmful substance/tablets when PW-4 Farooq (brother of Shakila) tried to make her understand that she should not visit them without asking her in-laws. She admitted that Anwar Ahmed – her son-in-law loved Shakila (deceased) and fulfilled all her wishes. Father-in-law of Shakila died many years before the marriage and her two *jeths* Mohd. Aslam and Mohd. Ashraf had separate houses. PW-1 Anisa Begum stated that she did not make any statement before the SDM or the police. She admitted that no dowry was ever demanded from her by the appellants.

13. PW-2 Sh.Saiyed Ahmed – father of the deceased Shakila stated that all the accused persons used to demand fridge and scooter from Shakila. He also stated that once accused had called *Panchayat* and matter was settled and both the parties were asked to maintain peace and harmony. He admitted that when the police reached the spot after his daughter committed suicide, he identified the dead body. He admitted that mother-in-law of his daughter was related to their family and family of the accused was residing at a distance of 20-25 feet from his house. Accused Mohd. Ashraf and Mohd. Aslam were already married and were living separately with their wife and children. PW-2 admitted that he was unemployed at the time of marriage of Shakila and even on the date of his deposition. His son Farooq worked as a Compounder with Private Doctor and earned about ₹1000 - 1500/- per month. He has been confronted with his statement where there is no mention of demand of fridge and scooter from Shakila by the accused persons. He has admitted that he had no grudge against his son-in-law Anwar Ahmed. He has also admitted that when Anwar Ahmed

learned about the death of Shakila, he consumed some poisonous substance and remained admitted in the hospital for long duration. **He has admitted it to be correct that accused never demanded any article of dowry directly from him.** Though he has admitted that *Panchayat* was called because Shakila had consumed some poisonous substance at her parental home, he denied that it was called because accused persons were afraid that Shakila might take such a step in their house also.

14. PW-3 Smt.Khurshid – *Bhabhi* of deceased Shakila has stated that after marriage of her *Nanad* Shakila, the accused persons started demanding fridge, scooter and other dowry articles and threatened to kill her if their demands are not made. She has stated that in November, 1995 it was Saturday when at about 1.00 pm accused Ashraf and Arif asked her to accompany their house where she saw Shakila hanging with a *chunni* tied on a *gardar*.

15. In her cross examination, **PW-3 Smt.Khurshid has admitted that the accused did not raise any demand directly from her or her husband. She could not tell specifically as which of the accused demanded what item. She has admitted that the house of the accused persons is visible from her house (parental home of the deceased) which is at a walking distance of 2-3 minutes.** She has stated that her husband was earning about ₹900-950 per month by working as a Compounder with a private doctor. She admitted that Anwar – husband of Shakila used to treat her nicely and Shakila always used to praise her husband. She admitted that the family of the accused persons owned two hotels and all the brothers were running

the hotels jointly. She also admitted it to be correct that on hearing about death of Shakila, Anwar tried to commit suicide and was removed to hospital.

16. PW-4 Sh.Farooq- brother of the deceased has stated that they performed good marriage of Shakila but after 4-5 days of the marriage, accused Ashraf and accused Muradan (mother-in-law of Shakila who has since expired) came to their house. Accused Ashraf complained as to what had been given to them in the marriage of Anwar and accused Muradan hurled abuses. **In his examination-in-chief, PW-4 Farooq has stated that he was not present when accused Murada and accused Ashraf came to his house and he was told about this by his wife.**

17. Surprisingly, neither the mother (PW-1) nor wife (PW-3) of Sh.Farooq (PW-4) had stated about any visit either by mother-in-law or *jeth* of deceased Shakila to their house (parental house of Shakila) to complain about the quality of the articles given in the marriage or raise any demand of dowry. Even PW-2 – the father did not state about any dowry demand being made from him.

18. PW-4 Sh.Farooq, during his cross examination, claimed his salary as Compounded to be ₹1700-1800 per month and that his father was not earning anything as well as the fact that the matrimonial house of Shakila was just 10-15 paces away from her parental home. He has denied that his sister Shakila when visited her parental home consumed sleeping pills and *Panchayat* was summoned in that connection. He has been confronted with his statement Ex.PW4/A wherein he did not state that mother-in-law and *jeth* of Shakila visited

their house and complained about the quality of the dowry articles or about any threat being given by any of the accused persons.

19. PW-9 SI Ram Sunder who reached the spot on receipt of copy of DD No.10A Ex.PW9/A alongwith Ct.Devender, has stated that when he reached the spot, the door was found broken open and the body was found hanging with a cloth tied to a *gardar* in the room. The body was brought down and placed on the bed. SHO and ACP reached the spot. SDM was informed. He also took the photographs from his camera. In cross examination, he has stated that he received the information at 1.45 pm and reached the spot within 15 minutes. He found parents of the deceased and other relatives present there. Many independent persons were also present there. The relatives of the deceased did not allege anything and he could not interrogate the husband because he had consumed some poisonous substance just after the incident.

20. DW-1 Sh.Anwar Ahmed – husband of the deceased Shakila has stated that while he alongwith his wife was living with his mother at the ground floor, his other brothers were living separately. He stated that his wife used to insist him to live separately but he asked her to wait. He also stated that in first week of September, his wife had some altercation with her brother (PW-4) and she consumed some poisonous substance at her parental home. At that time, though he wanted to take Shakila to Hindu Rao Hospital but was asked by her family not to take her to the hospital to avoid a police case and Shakila was treated at home. The treatment continued whole night and thereafter *Panchayat* was called by them (her in-laws) and Shakila

informed the *Panchayat* that she consumed tablets because of certain issues with her brother (PW-4 Farooq). DW-1 Sh.Anwar Ahmed has also stated that Farooq (PW-4) used to earn about 1000-1200 per month whereas he and his family were running two *dhabas*. When he received the information about the suicide being committed by his wife, he was at his *Dhaba* at Shadipur Depot. He was shocked and did not want to live, hence purchased pesticide and consumed but he was taken to hospital by his brother.

21. DW-2 Sh.Sabir Ali, who is resident of the same area, had confirmed the incident of some tablets being consumed by Shakila at her parental home. He has stated that 10-15 people attended the *Panchayat* from both the sides. When the members of *Panchayat* asked Shakila as to why she had consumed tablets, she replied that she had gone to her parental house from her matrimonial house and at her parental home her brother said something to her and that is why she had consumed tablets. Farooq (PW-4) was also present during the *Panchayat* and he assured the *Panchas* that no such complaint would be in future.

22. 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. 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.

23. As and when the aforesaid circumstances are established, a presumption of dowry death shall be drawn against the accused under Section 113B of the Evidence Act which is a presumption of law.

24. In the decision reported as Amar Singh vs. State of Rajasthan & State of Rajasthan vs. Jagdish & Anr. AIR 2010 SC 3391 has held as under:-

‘.....A prosecution witness who merely used the word “harassed” or “tortured” and does not describe the exact conduct of the accused which, according to him, amounted to harassment or torture may not be believed by the Court in cases under Section 498A and 304B IPC. For this reason, the High Court has taken a view that the charges against Jagdish and Gordhani have not been established beyond reasonable doubt and that their case is distinguishable from that of Amar Singh and that Jagdish and Gordhani appear to have been implicated because they were members of Amar Singh’s family.’

25. In the case reported as Kans Raj vs. State of Punjab & Ors. (2000) 5 SCC 207, it was observed as under:-

‘For the fault of the husband, the in-laws or the other relations cannot, in all cases, be held to be involved in the demand of dowry. In cases where such accusations are made, the overt acts attributed to persons other than husband are required to be proved beyond reasonable doubt. By mere conjectures and implications, such relations cannot be held guilty for the offence relating to dowry deaths. A tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits.’

26. On examination and appreciation of the testimonies of PW-1 Smt.Anisa Begum - mother, PW-2 Sh.Saiyed Ahmed - father, PW-3 Smt.Khurshid – *Bhabhi* and PW-4 Sh.Farooq – brother of deceased Shakila as well as statement of defence witnesses, who are none-else but husband and neighbour of the deceased (DW-1 Sh.Anwar Ahmed and DW-2 Sh. Sabir Ali) who participated in the *Panchayat*, following admitted facts can be discerned and are summarized as under:

- (i) The family of the deceased and her in-laws were well known to each other prior to this matrimonial alliance.
- (ii) Her parental home and in-laws house is in close proximity at a distance of 20-25 feet within the visible limit.
- (iii) The marriage was solemnized in front of House No. A-76, Bada Bagh and at the time of marriage there was no dowry demand.
- (iv) All the accused persons except Arif (devar) were living separately with their wife and children, having separate kitchen.
- (v) The main grievance was against the mother-in-law (now deceased) who used to ask the deceased to serve her like her elder

daughter-in-law who had been serving her for more than ten years prior to marriage of Shakila (deceased)

(vi) None of the family members of the deceased i.e. her parents, brother and bhabhi (PW-1 to PW-4) have stated about any dowry demand being made by any of the appellants from them.

(vii) There was great disparity in financial status of the parental family of the deceased and her in-laws family which can be shown as under:

Parental Family

- a) Father – unemployed, doing nothing.
- b) Mother – House wife
- c) *Bhabhi* – House wife
- d) Brother – Working as compounder, earning ₹1000 - 1500/- per month and the only bread earner of the family.

In-laws family

- a) Father-in-law was already dead.
- b) Male members in the family of the accused persons i.e. husband, two *jeths* and *devar* of deceased Shakila were jointly running two restaurants one at Shadipur Depot and another at Lal Bagh.

(viii) Husband of the deceased was in deep love with her, so much so that on hearing the news about commission of suicide by his wife, he consumed some poisonous substance and attempted to commit suicide but at that time his life was saved due to timely medical intervention. Now he is dead.

27. Allegations against two *jeth* are that they used to abuse. Against devar Arif that he once put wooden piece in her finger and pressed. Against *jethani* that she used to harass her. There is absolutely no specific allegation of any dowry demand being ever made by any of the appellants or Shakila being harassed or tortured on account of non-fulfilment of dowry demand.

28. PW-4 Farooq – brother of Shakila claimed that he was told by his wife about the dowry demand by the mother-in-law but the wife does not state so. Even the parents do not state that any of the appellants had ever made any dowry demand from them at any point of time or the deceased being harassed on non-fulfilment of the dowry demand.

29. Parental family of the deceased having only one earning member i.e. PW-4 – the brother who was a compounder and his income was just enough to support his own family, were not in a position to fulfil the dowry demand and it is an admitted fact that at the time of marriage there was no dowry demand.

30. The temperament of the deceased was such that when she was at her parental home, just after about two months of her marriage, after having a fight with her brother, she consumed some harmful tablets which her brother used to keep for treating the persons though he was a compounder only. (As per the statement of mother – PW1).

31. The Panchayat in this case was called not at the instance of the parents of the deceased but at the instance of the family of the husband of the deceased as after coming to know about her suicidal tendency,

they wanted the matter to be put up before the Panchayat so that they are not implicated, in case such type of incident is repeated.

32. DW-1 Anwar Ahmed has proved that he was living happily with his wife and there was never any issue of dowry demand. His elder brothers were separately settled with their wife and children and had no reason or occasion to raise any dowry demand.

33. The deceased has not left any suicide note. As per post-mortem report Ex.PW6/A the death was suicidal caused due to hanging.

34. Since the parental home of the deceased is just at a distance of a few paces, when the police reached the spot members of her parental family were already there. Despite arrival of the SDM and body being identified by PW-2 Sh.Saiyed Ahmed – father of the deceased, at that time no allegations of dowry demand or deceased being harassed or tortured on non-fulfilment of dowry demand was levelled against any of the appellants.

35. PW-1 to PW-4 had nowhere stated that deceased Shakila was tortured or harassed on account of non-fulfilment of dowry demand. When the appellants were living separately, the husband was in deep love with his wife that he could not even bear the shock of her death and consumed pesticide/poisonous substance, the financial capacity of the parental family of the deceased being just enough for that family to meet both the ends, marriage being performed without any dowry demand, the house being in close vicinity to the extent that from her parental house her in-laws' house was visible, it could not have been a case of dowry death, DW1- Anwar Ahmed - the husband of the deceased, who even as per admission of PW-1 to PW-4, used to fulfil

all her wishes to keep her happy would not have let anybody to even be harsh towards her what to talk of raising dowry demand or torturing her for non-fulfilment of any dowry demand.

36. The learned Trial Court has convicted all the appellants on the basis of conjectures and implications which could not have been done as there was neither any proof of dowry demand nor harassment of deceased by the appellants on account of any such dowry demand.

37. Recently a tendency has developed for roping in all the relations of the in-laws as accused persons and this appears to be the case here too.

38. The prosecution has failed to prove either any dowry demand by the appellants or the deceased being harassed by the appellants in connection with any such dowry demand so as to prove that it was a case of dowry death.

39. In view of above discussion, the appeal succeeds. The appellants are acquitted of all the charges. Their bail bonds are discharged.

40. LCR be sent back alongwith copy of this order.

41. A copy of this order be sent to the concerned Jail Superintendent for information.

PRATIBHA RANI
(JUDGE)

SEPTEMBER 11, 2017
'hkaur/st'