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

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Judgment dated 17th April, 2017

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CRL.A. No.555/2000

KARTAR @ RAJESH

..... Appellant

Through Ms.Perna Arora, Amicus Curiae

versus

STATE

..... Respondent

Through Mr.Rajat Katyal, APP for the State

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE VINOD GOEL

JUDGMENT (ORAL)

1. The sentence of the appellant in this matter was suspended by an order of 24.07.2002. When the appeal was taken up for hearing on 19.08.2016 none was present on behalf of the appellant and therefore bailable warrants in the sum of Rs.10,000/- through SHO, PS Sultan Puri for appearance of the appellant were issued. Since the bailable warrants were received unserved, bailable warrants in the sum of Rs.5,000/- against the appellant and the surety were again issued.
2. On 18.11.2016, keeping in mind the report of the SHO, this Court directed the trial Court to undertake the process under Section 82/83 of the Code of Criminal Procedure qua the appellant and a report be furnished to this Court. Consequent upon this order, proceedings under Section 82/83 of the Code of Criminal Procedure were initiated by the

trial Court and the appellant was declared a proclaimed offender. In the interest of justice, we have appointed Ms.Arora as Amicus Curiae in the present matter to appear on behalf of the appellant.

3. The present appeal has been filed under Section 374 of the Code of Criminal Procedure against the judgment dated 30.05.2000 and order on sentence dated 31.05.2000 passed by the learned trial Court in FIR No.609/1996, Sessions Case No. 70/97, by virtue of which the appellant stands convicted under Section 304B/498A of the Indian Penal Code (hereinafter referred to as 'IPC') and sentenced to undergo imprisonment for life and to pay a fine of Rs. 10,000/- for the offence punishable under Section 304B of IPC, and in default of payment of fine to further undergo simple imprisonment for a period of one year. The appellant was further sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 5,000/- for the offence punishable under Section 498A of IPC and in default of payment of fine to further undergo simple imprisonment for a period of six months. Both the sentences were ordered to run concurrently.
4. In a nutshell, the case of the prosecution is that on 02.06.1996, a DD No.18B was received by ASI Dharam Pal on the basis of which he had gone to LNJP Hospital, where he procured a MLC No. 46849 pertaining to Poonam (hereinafter referred to as the deceased), wife of Rajesh @ Kartar (the appellant herein), R/o U-335, Prem Nagar II Sultanpuri, Delhi which showed 90% burn injuries and she was declared unfit for the statement. The deceased expired on the same day. ASI Dharam Pal informed the concerned SDM and the statements of the brothers of the

deceased were recorded by him. A case under Section 498A/304B of IPC was registered against the appellant on the basis of the complaint made by Sh. Om Parkash (brother of the deceased) wherein certain allegations were made against him. After completion of the investigation, charge sheet was filed. Vide order dated 25.03.1997; charge for the offence punishable under Section 498A/304B of IPC was framed against the appellant to which he claimed not guilty and claimed to be tried.

5. In support of its case, the prosecution examined as many as 14 witnesses in all. No evidence was led by the appellant in his defence. The statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure wherein he had admitted the factum of marriage with the deceased in the year 1992. The appellant denied all the allegations of demand for dowry and any harassment caused to the deceased. The appellant claimed to be falsely implicated in the present case.
6. Ms. Arora, learned amicus for the appellant submits that the judgment passed by the trial Court is based on surmises and conjectures and the same is against the principles of natural justice, equity and good conscience.
7. Learned counsel further submits that the trial Court has overlooked the conduct of the appellant who had removed the deceased to the hospital and made every possible attempt to save her life. Burnt cotton mattress and pillow found at the spot clearly shows that the appellant had tried to douse the flames. Learned Counsel pointed out that there is not even a

single document/complaint available on record which can show that the deceased was maltreated, beaten or suffered any cruelty at the hands of the appellant or his relatives.

8. It was contended by the counsel for the appellant that the allegations for demand for dowry that were claimed to have been made by the appellant are not only vague but also general in nature and lack material particulars. The demands are exaggerations and thus, cannot form the basis of conviction either under Section 498 of IPC or much less under Section 304B of IPC. She further submits that the learned trial Court had committed an error by relying on the testimonies of PW1 and PW2, who were interested witnesses and hence cannot be relied upon.
9. Learned counsel for the appellant submits that the appellant has been falsely implicated in the present case and there was no harassment to the deceased much less for the demand of dowry. Even otherwise, the two sisters of the deceased are also happily married to the brothers of the appellant and leading a good and peaceful life with them. This alone would show that the allegations are baseless and could not be a ground to convict the appellant.
10. Per contra, Mr. Katyal, learned counsel for the State submits that the prosecution has been able to prove its case beyond any shadow of doubt and there is no infirmity in the order of conviction or the order on sentence.
11. Mr. Katyal submits that the testimony of the brothers of the deceased, PW-1 and PW-2 firmly establishes the factum of repeated demands of dowry by the appellant and harassment to the deceased when such

demands were not met.

12. Learned counsel for the State submits that the demands made by the appellant are specific in nature which is duly corroborated by the evidence of PW-1 and PW-2. Both the PW's categorically deposed that the deceased had time and again complained about the physical abuse which she suffered at the hands of the appellant when his demands for dowry were not met.
13. Learned counsel for the State submits that all the ingredients of Section 304-B of IPC stands fulfilled in the present case. To substantiate his arguments, learned counsel has relied upon the case of ***Kans Raj v State of Punjab***, reported at (2000) 5 SCC 207 wherein the Hon'ble Supreme Court while dealing with the ingredients of Section 304-B of IPC held as under:

“9. 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 304-B. 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 soon before her death.”

(Emphasis Supplied)

14. We have heard the learned counsel for the parties and considered their rival submissions, carefully examined the testimonies of the witnesses on record and the impugned judgment rendered by the learned Trial Court.
15. Before dealing with the rival submissions of the counsel, we deem it appropriate to reproduce Sections 304-B and 498-A of IPC which read as under:

“304-B Dowry death:

(1) 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 purpose 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. ”

Section 498A: Husband or relative of husband of a woman subjecting her to cruelty:

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation- For the purpose of this section, "cruelty" means-

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

16. Section 113-B of the Evidence Act is also relevant for the case in hand. Both Section 304-B of IPC and Section 113-B of the Evidence Act were inserted by Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths. Section 113-B reads as under:

"113-B. Presumption as to dowry death:

When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such 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.

Explanation.—For the purposes of this section, 'dowry death' shall have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860)."

17. In order to deal with the rival contentions of the parties, it would be appropriate to examine the testimonies of the star witnesses, which are PW-1 and PW-2 in the present case.
18. PW-1 Om Prakash (brother of the deceased) had deposed in his examination-in-chief that the deceased was physically assaulted for dowry at various instances which can be summarised as under:
1. After the marriage of the deceased, the appellant used to demand dowry and beat his sister. The demand for dowry was met 2-3 times by him and once he gave Rs. 2000/- to the deceased.
 2. On the occasion of Raksha Bandhan, which was 2-3 years prior to the incident the deceased told him that she was beaten by the appellant as his demands for dowry were not met.
 3. The appellant and the deceased were made to settle in Delhi by PW-1 & PW-2 but after the span of 2-3 months the appellant again started physically assaulting her on account of dowry. The deceased was thrown out of the house on many occasions but PW-1 and PW-2 intervened time and again to resolve the situation.
 4. On 31.05.1996, the appellant was arrested in a case and had asked for Rs. 5000 from him but PW-1 could only give Rs. 500. The appellant had promised to return the same after getting bail.
19. PW-1 Om Prakash further deposed that on the fateful day, he had visited the home of the appellant to take his money back. However, there was no one in his home and also found the cotton mattress and pillow to be in

burnt condition. After inquiry from the neighbourers, he found that the deceased had received burnt injuries and she was removed to the hospital.

20. PW-2 Sanjay (brother of the deceased) deposed on similar lines as deposed by PW-1 with regard to the beatings given to the deceased. He further deposed that he had given the following articles to the appellant to meet his demands for dowry:

1. Rs.1000 once,
2. Rs.500 once and
3. One gold ring.

21. PW-2 further deposed that he had not made any police complaints against the appellant with regard to the physical violence or the demand for dowry as he did not want to strain the marital bond between the appellant and the deceased and he was of the belief that one day the appellant would stop harassing her.

22. In this regard the medical evidence assumes importance, PW-12 Ratan Singh (Record Clerk, LNJP, Hospital) has proved the MLC of the deceased which is Ex.PW12/A. PW12 deposed that the whereabouts of Dr. A. Gupta were not known but he was aware about his handwriting. It is evident from the MLC that it was prepared by Dr. A. Gupta on 02.06.1996 at about 07.55 AM. As per MLC, she was declared unfit for the statement at 09.45 AM by Dr. Poonam Dahiya, whose whereabouts also were known to him.

23. PW-9 Dr. Yoginder Singh who conducted the post mortem of the

deceased on 04.06.1996, his detailed report is Ex.PW-9/A and deposed in his testimony as under:

“EXTERNAL EXAMINATION:

Dermoepidermal burn injuries were present over whole of the body. Scalp hair, eyebrows, eyelashes, axillary and pubic hair singed. Skin peeled off at places leaving reddened base. Unpeeled areas blackened due to soot. Smell of kerosene present in scalp hair.

Approximate area of burnt: 100% of total body surface area.

INTERNAL EXAMINATION

No abnormality deducted.

Opinion:

Death in this case caused due to burns shock consequent upon burn injuries. All the burn injuries are ante mortem, recent in duration and were caused by burn due to fire. However viscera was preserved and sealed to rule out any coincidental poisoning or sedative drugs. Hair sample of the deceased was preserved to be sent for chemical examination to confirm the presence of kerosene oil.”

24. As is evincible from the post-mortem examination of the deceased that the cause of death was shock due to burn injuries and all the burn injuries were ante-mortem in nature and were caused by the burn due to fire.
25. Coming first to the conviction under Section 304-B of IPC, the Supreme Court in *Kans Raj's case (Supra)* had laid down the following ingredients which need to be proven against the accused person before

he can be convicted under this Section:

- a. The death of a woman must be 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 soon before her death.
26. To convict a person under Section 304-B of IPC, the most essential aspect which needs to be proved is that the cruelty or harassment for bringing insufficient dowry must be soon before her death. Now the question which arises for consideration is as to what period may be considered as soon before her death.
27. The Hon'ble Supreme Court in ***Satvir Singh v. State of Punjab***, reported at **(2001) 8 SCC 633** while discussing the scope of the expression 'soon before her death' held as under:

“22. It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304-B is to be invoked. But it should have happened “soon before her death”. The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. The legislative object in providing such a radius of time by employing the words “soon before her death” is to emphasise the idea that her death should, in all probabilities, have been the aftermath of

such cruelty or harassment. In other words, there should be a perceptible nexus between her death and the dowry-related harassment or cruelty inflicted on her. If the interval elapsed between the infliction of such harassment or cruelty and her death is wide the court would be in a position to gauge that in all probabilities the harassment or cruelty would not have been the immediate cause of her death. It is hence for the court to decide, on the facts and circumstances of each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept “soon before her death”.

(Emphasis supplied)

28. The Hon'ble Supreme Court in **Kaliyaperumal v. State of T.N.** reported at **(2004) 9 SCC 157** while dealing with the expression ‘soon before her death’ held as under:

“5. A conjoint reading of Section 113-B of the Evidence Act and Section 304-B 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 113-B of the Evidence Act and Section 304-B 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 113-B of the Evidence Act. The expression

“soon before her death” used in the substantive Section 304-B IPC and Section 113-B 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.”

(Emphasis Supplied)

29. Now we proceed to analyse whether soon before her death there was a demand for dowry from the deceased by the appellant which had a live and proximate link to her death. PW-1 had specifically deposed that her deceased sister and the appellant had shifted to Delhi two years before her death and the appellant used to beat his wife on account of his unfulfilled demands for dowry. PW-1 had further deposed that his sister was also thrown out of the house by the appellant on various occasions after which he and his brother (PW-2) had to mediate between the appellant and his sister to resolve the situation. PW-1 had specifically deposed that the incident had happened 2-3 times about one and a half to

two years back and thereafter this incident was not repeated again. PW-1 had further deposed in his examination-in-chief that the appellant was arrested on 31.05.1996 in a case and was in dire need of Rs. 5,000 to be enlarged on bail. The appellant demanded the same from the deceased who in turn asked PW-1 to pay the said amount. PW-1 further deposed that he could only give the appellant Rs. 500 which the appellant promised to repay after getting the bail.

30. Therefore, we find that according to the material witnesses (PW-1 and PW-2) the demands for dowry and instances of physical abuse to the deceased had ceased to happen for a period of more than 1 year before the unfortunate incident which resulted in death of the deceased. The only instance of demand for dowry soon before her death relates to the demand of money by the appellant to get out on bail, but to the contrary, PW-1 had deposed that the appellant had stated that he would repay him the money as soon as he gets out on bail and therefore the same cannot be construed as a demand for dowry as defined under Section 304-B of IPC.
31. Therefore we do not concur with the findings of the learned trial Court that soon before her death; she was subjected to physical and mental cruelty in relation to the demand for dowry.
32. Coming next to the conviction of the appellant for the offence under Section 498-A of IPC, the Hon'ble Supreme Court in the case of ***Girdhar Shankar Tawade v. State of Maharashtra***, reported at (2002) 5 SCC 177, while laying down the essential ingredients to be fulfilled before convicting a person under Section 498-A of IPC, it was held as

under:

“3. The basic purport of the statutory provision is to avoid “cruelty” which stands defined by attributing a specific statutory meaning attached thereto as noticed hereinbefore. Two specific instances have been taken note of in order to ascribe a meaning to the word “cruelty” as is expressed by the legislatures: whereas Explanation (a) involves three specific situations viz. (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in Explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury: whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of “cruelty” in terms of Section 498-A.”

(Emphasis Supplied)

33. In the case of ***Bansi Lal v State of Haryana*** reported at (2011) 11 SCC 359, the Hon’ble Supreme Court laid down the scope of the word ‘cruelty’ as used in the Section 498-A of IPC and held as under:

“17. While considering the case under Section 498-A, (Sic Section 304-B) cruelty has to be proved during the close proximity of time of death and it should be continuous and such continuous harassment, physical or mental, by the accused should make life of the deceased miserable which may force her to commit suicide....”

34. In the present case, we have not found any instance of cruelty suffered by the deceased which could have caused any grave injury whether mental or physical as alleged by the brothers of the deceased i.e. PW-1

and PW-2. Both the PW's consistently deposed that their deceased sister was subjected to physical abuse regularly by the appellant but they did not lodge any Police complaint as they thought that the appellant would stop physical and mental torture to their sister and they did not want to become a stumbling block in their married life.

35. From the evidence on record, we find it difficult to believe as to why the brothers of the deceased failed to lodge the complaints about the alleged incidents of physical violence and dowry demands by the appellant if such instances continued for a long period of time. Additionally, it emerged from the case in hand that the two sisters of the deceased are married to the two brothers of the appellant who have not examined by the prosecution and could be the best evidence against the appellant. These two sisters who were living with the same family would be aware of any such physical or mental cruelty inflicted upon the deceased, but since they have not been examined by the prosecution, we find it difficult as to why they were not examined by the prosecution. It is also very hard to understand as to why the family of the deceased would agree to the marriage of the other two sisters of the deceased in the same family if they were aware of any physical and mental abuse being meted out by the appellant to the deceased.
36. As we have noted earlier that the only demand for dowry and harassment thereof in relation to it that is alleged by the witnesses is the demand for money by the appellant so that he can get out on bail and that too according to the PW-1 himself the appellant promised to repay as soon as he got out on bail. PW-1 had himself admitted in his examination-in-

chief that instances of demand of money by the appellant had ceased for the last one and a half to two years. Both PW-1 and PW-2 had deposed that their deceased sister had told them about the physical violence that she suffered at the hands of the appellant but as we have noted earlier that there was neither any complaint to the police to this effect nor any evidence for treatment of the deceased in any hospital has been forthcoming by the prosecution.

37. Taking into consideration the law as laid down by the Apex Court and circumstances of the present case, we are unable to accept the view of the Trial Court. The allegations are without any foundation and seem to be false and motivated. We are of the considered view that the prosecution has failed to prove its case against the appellant beyond reasonable doubt. The appellant deserve benefit of doubt. The appeal is allowed. Conviction and sentence recorded by the trial Court are set aside.
38. The fee of the Amicus is fixed at Rs.15,000/- and we direct Delhi High Court Legal Services Authority to pay in accordance of Rules governing them.
39. The Trial Court record be sent back along with a copy of this judgment.
40. The appellant was granted bail by an order dated 24.07.2002. Bail bonds are cancelled and the sureties stand discharged.

41. Copy of this judgment also be sent to the Superintendent-Central Jail, Tihar for updating the jail record.

G. S. SISTANI, J.

VINOD GOEL, J.

APRIL 17, 2017

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