

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

+ Crl.Appeal No.574/2000

Date of Decision: 30th March, 2017

SATISH KUMAR BHATIA Petitioner

Through Mr.Bhopal Singh, Adv.

versus

STATE Respondent

Through Mr.Panna Lal Sharma, APP.

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

P.S.TEJI, J.

1. The present appeal has been filed under Section 374 Cr.P.C. against judgment dated 06.09.2000 whereby the appellant has been found guilty and convicted for an offence punishable under Section 498A IPC and order on sentence dated 08.09.2000 whereby the appellant has been sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/- and in default to payment of fine, to further undergo rigorous imprisonment for a period of one year.

2. The facts of the case, as per the case of the prosecution,

in a nutshell are that on 08.09.1984 at about 4.55 A.M., an information was received at police station Subzi Mandi from one Sh.Vinod Kumar r/o House No.7870, Roshan Ara Road to the effect that one lady had burnt herself in House no.7872. The information was recorded at Serial No.22A in DD Register and copy of the same was handed over to SI Ram Swaroop for investigation.

3. SI Ram Swaroop reached the spot where Ashok Kumar, brother of the deceased Anju @ Chanchal Bhatia met him. He alleged that the deceased was his elder sister who had been married to the appellant/accused Satish Kumar on 02.10.1976. After marriage, Satish Kumar used to give beatings to her occasionally. Whenever she visited his house, she used to complain against her husband, father-in-law and dewar that they had been harassing her. On the day of occurrence, he received information on telephone from Krishan Lal that Anju @ Chanchal had died due to burns injury. He came to Delhi with his family and went to Anju's house. He saw dead body of Anju @Chanchal lying on a cot in a burnt condition.

4. On the statement of Ashok Kumar, SI Ram Swaroop made an endorsement and got a case under Section 498A IPC registered.

Statements of witnesses were recorded and the post mortem on the dead body was conducted. During investigation, site plan was prepared and Section 306/34 IPC also added. On 12.09.1984, the appellant/accused Satish Kumar, husband and Sh. Baldev Raj, father-in-law, were arrested.

5. After completion of investigation, challan was filed and later the M.M. committed the case to the court of sessions.

6. Vide order 13.07.1987, charge under Sections 498A IPC and Section 306 IPC was framed against Mr.Satish Kumar, appellant/accused and his father Sh.Baldev Raj. Both the accused pleaded not guilty and claimed trial. During pendency of trial, Mr.Baldev Raj, father-in-law died and proceedings against him were dropped vide order dated 16.12.1994 and only the appellant/accused, stood trial.

7. In support of its case, the prosecution examined 24 witnesses in all. PW-1 SI Manohar Lal, PW-2 HC Satvir Singh, PW-3 Dr.L.T.Ramani, PW-4 Sham Lal, PW-5 Sh.Ashok Kumar, PW-6 Subhash Chand, PW-7 Satish Chand, PW-8 Gulshan Lal, PW-9 Vinod Kumar, PW-10 HC Baljeet Singh, PW-11 SI A.Q.Khan, PW-12 SI Ram Narain, PW-13, Gopal Nath, PW-14 Durga Prashad, PW-15 Dr.D.D.Khetrapal, PW-16 Man Mohan, PW-17 ASI Ganga Dhar

Meena, PW-18 Const. Subhash Chand, PW-19 Retd.Constable Magu Ram, PW-20 Inspector C. Singh, PW-21 SI Ram Niwas, PW-22 Smt.Asha Mishra, PW-23 Smt.Saroj Bala and PW-24 Retired SI Ram Sawroop.

8. In support of his appeal, the appellant has taken the ground that he should have been acquitted under Section 498A IPC as the prosecution witnesses have improved upon their statements made before the police under Section 154 Cr.P.C. and under Section 161 Cr.P.C. where there were no specific allegations against the appellant showing that he used to cause cruelties upon the deceased which are covered under Section 498A IPC; that there was inconsistency in the testimony of PW-4 which was also recorded in the order dated 06.09.2000 stating that “PW-4 undoubtedly has made a material improvement upon his statement and deposed about the complaint of insufficient dowry and demand of money and taking the money which was not found recorded in his previous statement”; and also there was mention in the testimony of PW-4 about holding of Biradari meeting, but not even a single person from the same had been produced to corroborate the statement; that there was also inconsistency in the statements made by PW-5 before the court and the ones made before the police, which is also acknowledged by the

learned Trial Court, but still has been made the basis for convicting the appellant; that repeatedly the Trial Court observed that the prosecution witnesses are guilty of material improvements, yet, instead of giving the benefit of doubt to the appellant, the appellant has been held guilty for the offence punishable under Section 498A IPC; that the Trial Court erred in not giving the benefit of Section 4 of the Probation of Offenders Act to the appellant as even in an offence under Section 304 IPC, the Hon'ble Supreme Court in 2000 I AD (Criminal) SC 631 was pleased to give the benefit of probation while in the present offence attracts maximum punishment of three years.

9. On the contrary contra, learned Additional Public Prosecutor for the State has vehemently opposed the aforesaid contentions raised on behalf of the appellant and submitted that the judgment of conviction 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.

10. Arguments advanced by the learned counsel for the appellant as well as learned APP for the State were heard.

11. PW-3 Dr.L.T.Ramani is the Civil Surgeon who had conducted

the post mortem on the dead body of the deceased. He deposed that the burns sustained by the deceased were ante mortem in nature and had been caused by fire. The cause of death was shock resulting from burns and time of death was about 12 hours. He proved the post mortem report as Ex.PW3/A.

12. PW-4 Sham Lal is the brother of the deceased. He deposed that two months after marriage, the accused persons including appellant started harassing his sister for not bringing sufficient dowry and kept on demanding money, some times scooter and some times money for purchasing a truck. He further stated that they as per their potential gave Rs.2,000, Rs.5,000 and Rs.10,000 on different occasions, but the accused still beat his sister. On 08.09.1984, at 6.45 AM, a call was received that his sister had expired. In cross examination, he volunteered that he had not stated about the demands made by the accused to the police as he was not in a fit state of mind. He also stated that he had not told the police about the money given by them to the accused nor about harassment being meted out to his sister despite money being given to the accused.

13. PW-5 Ashok Kumar is brother of the deceased. He deposed that his sister had been married to the appellant and after marriage, whenever she met them, she used to say that her husband and in-laws

had been harassing her. He deposed that the cause of harassment as deposed by his sister to him was that her husband/appellant used to attribute unchastity to her. He deposed that his sister visited him regularly post marriage and would always mention that her husband and other in-laws used to harass her.

14. PW-6 Subhash Chand is brother of the deceased. He deposed that his sister had been married to the appellant and out of the wedlock she had two children. She used to visit them but never complained to him about anything, but told him that her husband and father-in-law used to beat her many a time. She also told him that she was being harassed. On 08.09.1984, he received a phone call that his sister had died. During cross examination, he deposed that his sister and brother-in-law used to meet him and inform that the accused and the deceased had been living well but there used to be some altercations between them sometimes.

15. PW-7 Satish Chand is the brother of the deceased. He deposed that his sister was married to the appellant/accused. He also deposed after 2/4 months of marriage when his sister visited them she had complained of harassment and demand of dowry by the appellant and his father. She had also complained that they had also beaten her.

In cross-examination, this witness was confronted with many

improvements made by him in the statement made to the police.

16. PW-8 Gulshan Lal is the brother of the deceased. He also deposed that his sister had been married to the appellant. At the time of marriage, dowry articles had been given as per our capacity and good marriage had been performed. He deposed that whenever his sister visited them, she complained of the harassment and beatings received by her at the hands of her husband and in laws. When she visited them last time in February, 1984, she told them that she did not want to go her matrimonial home in view of the harassment, beatings and dowry demands made by her husband and in-laws.

17. In cross-examination, this witness was confronted with many improvements made by him in the statement made to the police.

18. PW-24 SI Ram Sawroop is the IO of the case. He deposed that on 08.09.1984 when he was posted at Police Station: Subzi Mandi he had received DD No.22A for investigation. On reaching the spot, he found the appellant and his father present at the spot, the dead body was lying outside the bath room. He recorded statement of Ashok Kumar, brother of the deceased and sent the tehrir for registration of case. On 12.09.1984, he had effected arrest of father of the appellant

(since deceased).

19. From the testimony of PW-5 and PW-6, there is nothing to say that the deceased was harassed or meted with cruelty for or in connection with demand of dowry. They have stated that their deceased sister was harassed by the appellant, but they have not given any reason for any such harassment which does not connect the appellant with the demand of dowry.

20. So far as the testimony of PW-4, PW-7 and PW-8 is concerned, they have stated that their deceased sister was harassed by the appellant for bringing insufficient dowry. PW-4 had deposed that the appellant and his family membes taunted his sister for bringing insufficient dowry and kept on demanding money for scooter and truck. He further deposed that sometimes they gave Rs.2,000/-, Rs.5,000/- and Rs.10,000/-.

21. Testimony of PW-4 does not inspire confidence and there are material improvements and inconsistencies in his statement for the reasons that in his statement recorded under Section 161 Cr.P.C. he had not stated to the police about any harassment meted out to his deceased sister by the appellant. He had even

admitted during his cross examination that he had not stated about demands of dowry to the police. He had also not stated to the police about the demand for scooter and money for purchasing truck. He had also admitted to not having stated to the police about paying any money to the appellant. The statement of PW-4 shows that he made material improvements during his depositions in the court regarding harassment to the deceased on account of demand of dowry. In his statement made to the police he had not stated anything about the demand of any dowry or money by the appellant, but during his deposition in the court, he changed his version and stated that his sister was harassed by the appellant on account of demand of dowry, which creates a doubt about the case of prosecution and makes his testimony unreliable.

22. Similar is the position with regard to testimony of PW-7 and PW-8. They have also made material improvements and there are inconsistencies in their statements. In their statement made to the police under Section 161 Cr.P.C., they have not stated anything against the appellant that he had ever harassed

or tortured the deceased on account of demand of dowry. But, during their deposition before the court, they have stated that deceased was harassed by the appellant on account of demand of dowry. These material improvements and inconsistencies made their testimony unreliable and does not inspire confidence of the court.

23. It is worthwhile to mention that PW-5 Ashok Kumar is the complainant of the case on whose statement (Ex.PW5/A), the FIR of the instant case was registered. Neither in his statement Ex.PW5/A nor during his deposition in the court, he has stated anything to the effect that the deceased was ever harassed by the appellant or any of the family members for the demand of dowry. Even, PW-6 has stated that the deceased informed him that she was living well with the appellant/husband.

24. There is no other public witness on the record which could connect the appellant with the offence of the present case. The testimony of the brothers of the deceased (PW-4 to PW-8) is not reliable and trustworthy to connect the appellant with the

demand of dowry. There are several material improvements in the testimony of PW-5, PW-7 and PW-8 which make the case of the prosecution doubtful.

25. Reliance in this regard is placed on the case of Mritunjoy Biswas Vs. Pranab @ Kuti Biswas and Anr (2013) 12 SCC 796, where the Apex Court held as under:

"As is evincible, the High Court has also taken note of certain omissions and discrepancies treating them to be material omissions and irreconcilable discrepancies. It is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence can take advantage of such inconsistencies. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission (See Leela Ram vs. State of Haryana and another, Rammi alias Rameshwar v. State of M.P. and Shyamal Ghosh v. State of West Bengal)."

26. On similar point, it was also observed in another case of

State of Gujarat vs. Kishanbhai etc (2014) 5 SCC 108 that glaring inconsistencies and infirmities in statement of witnesses render their statements unreliable. Hence benefit of doubt must be given to the accused.

27. In view of above discussion, this court is of the considered opinion that no case under Section 498A IPC is made out against the appellant and while extending him benefit of doubt, he is acquitted of the said offence.

28. As discussed above, the judgment of conviction and order on sentence are set aside. The appellant is on bail. His bail bond and surety bond stand discharged.

29. The appeal stands disposed of accordingly.

MARCH 30, 2017

**(P.S.TEJI)
JUDGE**