

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.A. No.437/2001**

Date of Decision : May 9th, 2017

SATYAWATI & ORS Appellant
Through: Mr.M.L. Yadav, Adv.

versus

STATE Respondent
Through: Mr.Sundershan Joon, APP for the
State.
Insp.Uma Dutt, PS Mangol Puri.

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

JUDGMENT

P.S.TEJI, J

1. Aggrieved by the judgment of conviction dated 30.05.2001 convicting the appellants, namely, Smt.Satywwati, Shyam Sunder, Kanhiya Lal, Subhash Chand and Smt.Malti finding them guilty under Sections 304B and 498A/34 IPC and order on sentence dated 31.05.2001 vide which the appellants were sentenced to undergo seven years rigorous imprisonment for the offence under Section 304B IPC and also to undergo one year rigorous imprisonment for the offence under Section 498A IPC with fine of Rs.1,000/- each, in default of payment of fine they were ordered to further undergo

simple imprisonment for one month, the present appeal has been preferred.

2. The factual matrix emerging from the record is that on 21.04.1997, on receipt of DD No.17A, SI Sanwar Mal along with Ct.Subash Chand reached at House No.Q-6/105, Mangol Puri where a dead body of deceased Mithlesh was found lying at a takhat. There were ligature marks on the front side and left hand side of the neck of the deceased. It was revealed that the deceased had committed suicide by hanging. One saree was produced by appellant Malti which was seized. On 22.04.1997, SDM got the post-mortem conducted on the dead body of the deceased. On 23.04.1997, statements of Jawahar Lal and Yogesh Kumar, father and brother of the deceased respectively were recorded. Thereafter, the SDM had ordered for registration of FIR.

3. In his statement, the complainant Jawahar Singh, father of the deceased had stated that Mithlesh was married with appellant Sham Sunder on 26.02.1995. In the marriage, he gave dowry articles though no dowry was settled. After 2/4 months of marriage, his daughter fell ill and came to his house. She told that her in-laws used to tell her that she had brought insufficient dowry and used to demand scooter or motorcycle. She also told that accused Rajinder Kumar Kohli was having illicit relations with her

mother-in-law; he used to reside there; they used to take liquor; eat meat and appellant Sham Sunder also used to take liquor. After taking liquor, appellant Sham Sunder used to beat her and abuse her and say that motorcycle was not given in the dowry. He used to tell the deceased to bring scooter or cash in lieu thereof. Deceased came to the house of the complainant; started weeping and asked him to pay the cash or scooter else her husband, mother-in-law and Rajinder Kumar Kohli would beat her. The complainant paid Rs.15,000/- to his daughter. After two months, his daughter called him again and stated that her husband and mother-in-law used to harass her for dowry and demanded cash. In July 1996, his daughter was pregnant but she was beaten up for demand of dowry which led to a miscarriage. The deceased used to send letters to the complainant demanding money; complaining against her mother-in-law, husband, Malti and Kanhiya Lal that they used to give beatings to her. Thereafter, accused persons and others came to the house of the complainant and took the deceased. In the said panchayat, they promised not to demand dowry and not to beat the deceased. Thereafter also, the complainant received letters from the deceased that she was being harassed on account of dowry and the complainant had paid Rs.30,000/- in instalments. In February 1997, appellant Sham Sunder came to his house and demanded

Rs.40,000/- for running a factory and after mortgaging his agricultural land, the complainant gave Rs.20,000/- to him. On 21.04.1997, the complainant received a call that his daughter Mithlesh had expired.

4. During investigation, the police seized the letters allegedly written by the deceased. After completion of investigation, charge sheet was filed in the Court.

5. Charge under Sections 498A/304B/34 IPC was framed against all the appellants to which they pleaded not guilty. The prosecution had examined as many as fourteen witnesses, namely, PW1 Bhagwan Singh, PW2 Yogesh Kumar, PW3 Rajinder Kumar, PW4 Mohan Singh (also PW9), PW5 Jahwar Singh, PW6 Ramesh, PW7 HC Ram Chander, PW8 Vinay Bhushan, PW10 Ct. Mahesh, PW11 Dr.K.K. Goel, PW12 HC Naresh Kumar, PW13 Ct.Subash and PW14 SI Sanwar Mal.

6. The statements of the accused persons were recorded under Section 313 of the Cr.P.C. Accused persons did not examine any witness in their defence.

7. The appellants were held guilty by the learned Additional Sessions Judge vide judgment of conviction dated 30.05.2001 and passed the order on sentence on 31.05.2001.

8. The grounds challenging the judgment of conviction is that

there is no iota of evidence against the appellants to substantiate the charge against them. During the matrimonial life, the deceased had been living with appellant Shyam Sunder and had been visiting her parental home but neither she nor any of her family member ever make any complaint regarding any demand of dowry or harassment by the appellants. No independent witness from the locality of the house of the appellants or from the house of the deceased had been produced by the prosecution. The letters produced on record by the prosecution allegedly written by the deceased do not suggest any demand of dowry. It is further submitted that there is no evidence on record to say that there was demand of dowry or that the deceased was ever harassed or beaten by any of the appellants for or in connection with demand of dowry.

9. Per contra, arguments advanced by learned Additional Public Prosecutor for the State are that the appellants have been rightly held guilty under Sections 498A/304B IPC by the trial court. The father as well as other relatives of the deceased have duly supported the case of prosecution that the deceased was subjected to cruelty and harassment on account of demand of dowry by the appellants. There is sufficient evidence against the appellants to hold them guilty for the offences of harassment on

account of demand of dowry and of dowry death.

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

11. In his testimony, PW1 Bhagwan Singh had deposed that the deceased was his real brother's daughter. He was working in a factory at 395, Gali No.6, Tuglakabad Extn. as a tailor. He used to visit the deceased. Mithlesh told him that accused Satyawati had relations with one Rajinder as husband and wife; they both used to drink liquor together and Rajinder used to sleep with Satyawati; PW1 produced the letters and photographs handed over to him by Mithlesh and proved the same as Ex.PW1/1 and Ex.PW1/2.

12. PW2 Yogesh Kumar, brother of the deceased had deposed that on 26.02.1995, his sister Mithlesh was married to accused Sham Sunder. Whenever his sister used to come to their house, she used to tell that her mother in law Satyawati was living with Rajinder Kohli and used to take liquor with him. Sham Sunder also used to take liquor with them. His sister was beaten by them. He further deposed that all the accused persons used to demand motor cycle and cash and used to harass his sister. His father agreed to pay money in instalments of Rs.2,000/- or Rs.3,000/-. Once, his father gave Rs.15,000/- to accused Sham Sunder to purchase motor cycle. His sister used to write letters to them. In

the year 1996, his sister became pregnant and she was beaten and the doctor informed that the child had died inside her womb. In the month of December 1996, 10-12 persons including the accused persons came from Mangol Puri and said that the sister of PW2 would be kept properly and would not be harassed. After one/two months, they received a letter from Mithlesh and also by telephone, she informed that she was being harassed and beaten and money was being demanded. In February/March 1997, accused Sham Sunder came to their house and demanded Rs.40,000/- for running a factory. His father after mortgaging agricultural land gave Rs.20,000/- to accused Sham Sunder.

13. PW3 Rajinder Kumar also made similar statement as that of PW2.

14. PW4 (PW9) Mohan Singh was the neighbour of the appellants. In his deposition, he had deposed that on 20.04.1997 when he was going to attend the call of nature and was passing from the house of the appellants, he heard Rajinder Singh and Satyawati saying to Mithlesh that she was asked to bring Rs.40,000/- and why she had brought Rs.20,000/-. She was asked to bring Rs.20,000/- more else she would be killed.

15. PW5 Jawahar Singh, father of the deceased had also deposed on the same lines of PW2 and PW3. He deposed that he gave

Rs.2,000/- to his daughter on three occasions and Rs.4,000/- on two occasions and Rs.15,000/- on one occasion. In February 1997, accused Sham Sunder came to his house and demanded Rs.40,000/-. This witness gave Rs.20,000/- to accused Sham Sunder after mortgaging his land.

16. From the testimony of PW1 to PW5, it is amply clear that the deceased was being harassed by the appellants for or demand of dowry. In their testimony, these witnesses have deposed that after the marriage of the deceased with the appellant Sham Sunder, she was harassed and beaten up by the appellants for or in connection with demand of dowry. They have stated that the appellants used to demand motorcycle or cash in lieu thereof from the deceased and for the same, they used to harass her and also gave beatings to her. It is also stated by the witnesses that Jawahar Singh, father of the deceased gave Rs.2,000/- or Rs.3,000/- to the deceased on several occasions. It is also stated by the witnesses and specifically by PW5 Jawahar Singh that PW5 gave Rs.20,000/- to the appellant Sham Sunder after selling his agricultural land.

17. Thus, from the testimony of above witnesses, there is enough evidence on record from which it has been established that the deceased was being harassed by the appellants for or in connection with demand of dowry. Therefore, the conviction of

the appellants deserves to be upheld under Section 498A/34 IPC.

18. So far as the conviction of the appellants under Section 304B IPC for causing the dowry death of the deceased is concerned, in the case of ***Devi Lal vs. State of Rajasthan*** AIR 2008 SC 332, Hon'ble Apex Court has observed that the ingredients of provisions of section 304 B IPC are (1) that the death of the woman was caused by any burns or bodily injury or in some circumstances which were not normal; (2) such death occurs within 7 years from the date of her marriage; (3) that the victim was subjected to cruelty or harassment by her husband or any relative of her husband; (4) such cruelty or harassment should be for or in connection with the demand of dowry; and (5) it is established that such cruelty and harassment was made soon before her death. It was further observed that before an accused is found guilty for commission of an offence, the Court must arrive at a finding that the ingredients thereof have been established. It was held that statement of a witness for the said purpose must be read in its entirety. It is not necessary for a witness to make a statement in consonance with the wording of the section of a statute. What is needed is to find out whether the evidences brought on record satisfy the ingredients thereof.

19. Necessary ingredients of dowry death as provided under

Section 304B of IPC are :

(i) Deceased was the subject matter of cruelty on account of dowry and culminates into guilt of accused under Section 498A IPC;

(ii) The death should have taken place due to bodily injuries other than normal circumstances; and

(iii) Such death was the subject matter of cruelty soon before death.

20. As far as death of the deceased Mithlesh is concerned, it is not in dispute that she died due to hanging which shows that the death of the deceased was not under normal circumstances and was due to the bodily injuries which fulfil the first ingredient for the commission of offence under Section 304B IPC.

21. The second ingredient that death of the deceased had taken place within seven years of her marriage with the appellant is established from the evidence, as marriage had taken place on 26.02.1995 and her death took place on 21.04.1997 i.e. within three years of her marriage.

22. The next and the most important ingredient required to be proved from the evidence is that the deceased was subjected to cruelty and harassment on account of demand of dowry by her husband or any relative of her husband and that was done soon before death. The prosecution has produced PW1 to PW5 to prove these ingredients. PW1 happened to be uncle of the deceased,

PW2 & PW3 happened to be brothers of the deceased, PW4 happened to be neighbour of the appellants and PW5 happened to be father of the deceased. The detailed discussion of their testimony has already been made.

23. The last ingredient is based upon the commission of offence under Section 498A IPC and while committing the offence under Section 498A IPC, if it connects with the death, then it would be an offence punishable under Section 304B IPC. The prosecution has failed miserably to establish beyond reasonable doubt that any cruelty or harassment was meted out to the deceased for or in connection with demand of dowry by any of the appellants soon before her death. The ingredient of harassing or beating the deceased for or in connection with demand of dowry soon before her death is missing from the testimony of above mentioned prosecution witnesses. Though from their testimony, it has duly been established that the deceased was subjected to harassment and cruelty for or in connection with demand of dowry, but no incident or occasion had been brought on record to connect any of the appellant with the said harassment or cruelty meted out to the deceased soon before her death.

24. The argument advanced by the learned APP for the State is that Section 113B of the Indian Evidence Act leads to the

presumption of the guilt of the appellants. Section 113B of the Indian Evidence Act reads as under :

“113B. 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 has 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.”

25. The presumption under Section 113B of the Evidence Act can be drawn only where the ingredients of Section 304B IPC are fulfilled. The prosecution has failed to establish the necessary ingredient of dowry death i.e. cruelty or harassment meted out to the deceased by the appellant “soon before her death”. As mentioned above, the prosecution has failed to prove the chain of necessary ingredients to raise the presumption under Section 113B of the Indian Evidence Act.

26. From no stretch of imagination, the evidence led by the prosecution in the present case could culminate into conviction of the appellants under Section 304-B read with 34 IPC.

27. It has been brought on record that all the appellants remained behind the bar before suspending their sentence by this Court as evident from their nominal roll.

28. In view of the above discussion and the evidence discussed,

this Court upholds the judgment of conviction and order on sentence awarded to the appellants under Section 498A read with Section 34 of the IPC.

29. However, the judgment of conviction and order on sentence awarded to the appellants under Section 304B read with Section 34 IPC is set aside.

30. Apparently, the death of the deceased had taken place on 21.04.1997; the charge was framed on 02.03.1998; judgment of conviction was passed on 30.05.2001; order on sentence was passed on 31.05.2001; sentence of the appellants was suspended by this Court in 2001/2002; the appellants have faced the protracted trial for about 20 years and since there is no minimum sentence provided under Section 498A IPC, the interest of justice would be met if the sentence of the appellants is modified to the extent already undergone by them. It is held accordingly.

31. The appeal is disposed of accordingly.

32. Pending application, if any, is also disposed of.

(P.S.TEJI)
JUDGE

MAY 09, 2017
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