

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

Date of Decision : March 06th, 2017

+ Crl. A. No. 458/2001

SURENDER SINGH AND OTHERS Appellants

Through: Mr. R.S. Mishra, Advocate

versus

STATE GOVT. OF NCT OF DELHI Respondent

Through: Mr. Panna Lal Sharma, Additional
Public Prosecutor for the State

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

JUDGMENT

P.S.TEJI, J

1. The present appeal has been filed being aggrieved by the judgment of conviction dated 29.06.2001 convicting the appellants, namely, Surender Singh, Nafe Singh and Smt.Shama Kaur under Sections 498-A/304-B/34 IPC and order on sentence dated 03.07.2001 vide which the appellants were sentenced to undergo seven years rigorous imprisonment with fine of Rs.200/- each for the offence under Section 304-B IPC and also to undergo three years rigorous imprisonment for three years with fine of Rs.200/- each for the offence under Section 498A IPC. In default of

payment of fine, the appellants have been ordered to further undergo rigorous imprisonment for three months each on each count.

2. The factual matrix emerging from the record is that on 09.12.1998, an information regarding commission of a suicide by a woman, namely Basanti, by hanging herself, was received in the police station and the same was assigned to SI Prabhu Dayal who along with other police officials went to the spot. At the spot, it was revealed that the dead body of deceased was being prepared for cremation. Smt.Sushila Devi and Chand, mother and brother of the deceased respectively, also reached the spot. It was revealed that the marriage of deceased with accused Surender Singh was solemnized about one and a half year ago. The Sub Divisional Magistrate of the area was informed who directed the police to produce the relatives of the deceased before him on 10.12.1998. The dead body of the deceased was sent to mortuary for conducting post mortem.

3. Statement Ex.PW1/A of Smt.Sushila, mother of the deceased was recorded who stated that Basanti was sent to her parental house about one and a half month prior to the incident and on being pacified, her husband took her back. She further stated that for the marriage, she had given Television, clothes, chairs, table, one tola

of gold and silver jewellery. It was alleged that the in-laws of the deceased were demanding a scooter in dowry and used to beat the deceased. When deceased was sent to her parental home about one and a half month prior to the incident, there had been a demand of dowry and Smt.Sushila had arranged Rs.5,000/- to be paid by Suraj Bhan, younger brother of her husband. She further stated that she was informed about the death of her daughter by one Subey Singh and Hukum Singh. When she reached the spot, she found her daughter dead and there were some marks on her neck. She further stated that her daughter was being harassed by all the three accused persons.

4. On the basis of directions issued by the SDM, the FIR of the instant case was registered under Sections 498A/304B/120B IPC and Sections 3/4 of the Dowry Prohibition Act. On 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 nine witnesses, namely PW1 Smt.Sushila Devi, PW2 Suraj Bhan, PW3 Chand, PW4 Head Constable Krishna, PW5 Jagbir Singh, PW6 Daryal Singh, PW7 Dr.Komal Singh, PW8 Constable Devi Dayal and PW9 Sub Inspector Prabhu Dayal.

6. After completion of prosecution evidence, the statements of the accused persons (appellants-herein) were recorded under Section 313 of the Cr.P.C. The appellants did not lead any defence evidence.

7. The appellants were held guilty by the learned Additional Sessions Judge vide judgment of conviction dated 29.06.2001 and passed the order on sentence on 03.07.2001.

8. Argument advanced by the learned counsel for the appellants is that the Investigating Officer had not examined any witness from the neighbourhood of the house of the appellants to know about the cruelty meted out on the deceased. It is further submitted that the deceased had not written any letter or complaint to her parents or to any authority with regard to cruelty meted out to her on account of demand of dowry. Even the brother of the deceased, namely, Chand (PW3) had not made any such complaint to any authority. There are contradictions in the testimony of the witnesses inasmuch as the mother of the deceased had deposed that Rs.5,000/- were demanded but the brother of the deceased had not said so in his statement. There are contradictions with regard to payment of money inasmuch as PW2 had stated that he had given money to his bhabhi to be given to deceased but in his cross-examination, PW2 had stated that he had given money directly to

the appellant no.1-Surender Singh. It is further submitted that PW1 had deposed that she was told by the deceased that her mother-in-law gave her a fist blow due to which her teeth had broken, but there is no medical evidence supporting the said statement. It is further submitted that there was no demand of dowry either from the deceased or from her family and that there is no evidence that the deceased was never harassed or meted out with cruelty for or in connection with demand of dowry. It is further submitted that there is delay in lodging the FIR and the said delay has not been explained by the prosecution as the incident had taken place on 09.12.1998 at 01.00 p.m., but the FIR was lodged on 10.12.1998 at 11.50 p.m.

9. Per contra, argument advanced by learned Additional Public Prosecutor for the State is that the appellants have been rightly held guilty under Sections 498A/304B IPC by the trial court. The relatives of the deceased as well as other public witnesses 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. To appreciate the arguments advanced from both the sides, I have gone through their submissions and material available on record meticulously.

12. In her testimony, PW1 Sushila Devi, mother of the deceased had deposed that her daughter Basanti was married with accused Surender since about one and a half year ago prior to the incident. After three months of the marriage, accused Surender (husband), Nafe (father-in-law) and Sama Kaur (mother-in-law) started beating Basanti on account of insufficient dowry. Basanti informed PW1 about the same when she came to her house after she was given beatings by the accused persons. Basanti had told her that all the accused persons used to give her beatings and her mother-in-law had given a fist blow on her face due to which her teeth had broken. Accused persons did not provide any food to the deceased. PW1 further stated that the deceased had informed her that the accused Surender used to ask for Rs.5,000/- and a scooter. PW1 had borrowed Rs.5,000/- from her Devar and had given it to Basanti about 15 days prior to her death. She further deposed that Sube and Hukum Singh informed her that Basanti was admitted in hospital and when she and her son Chand came to the house of the accused persons, she saw the dead body of Basanti which was

going to be taken for cremation. PW1 lifted the cloth over the dead body and found ligature mark on her neck. Chand subsequently informed the police. Statement of PW1 was recorded vide Ex.PW1/A.

In her cross-examination, PW1 had stated that after the marriage, Basanti came to her house 3-4 times. PW1 had informed her husband and her brother-in-law (devar) whatever was told to her by Basanti. She and her husband had made efforts to tell the accused persons to keep her daughter Basanti happy. She denied that Basanti had committed suicide as she was mentally deranged or that accused persons had not subjected Basanti to cruelty on account of demand of dowry.

13. PW2 Suraj Bhan, uncle of the deceased has corroborated the testimony of PW1. PW2 had deposed that his niece Basanti was married with accused Surender. About one month prior to the death of Basanti, his Bhabhi Sushila asked him for Rs.5,000/- and he had given the same to her. Sushila told him that she needed money to give it to the husband of Basanti as accused Surender used to harass Basanti on account of demand of dowry. Sushila also told him that parents-in-law of Basanti used to harass her on account of inadequate dowry.

During cross-examination, PW2 had stated that about one

and a half month prior to her death, Basanti came to his house and told him that accused persons used to give beatings to her and used to harass her on account of insufficient dowry. He further stated that he had given Rs.5,000/- to accused Surender who came to his house after many days of Basanti coming to his house. After he had given money to Surender, he had received the news of death of Basanti after about one and a half month. He further stated that he had made a complaint to the respectable of the village of the accused persons, regarding harassment of Basanti by the accused persons but he had not made the complaint in writing. He denied that accused persons had never demanded any money from Basanti or from her family or that they had not harassed or beaten Basanti on account of insufficient dowry or that he had not given Rs.5,000/- to accused Surender.

14. Testimony of PW1 and PW2 has further been corroborated by PW3 Chand, brother of the deceased. PW3 had deposed that after three months of the marriage, his sister Basanti came to their house and told them that she was harassed on account of inadequate dowry. She also complained that she was beaten by all the accused persons and was not given any food. About one and a half month prior to her death, she came to their house and repeated the complaint of torture and also mentioned about the demand of

scooter made by accused persons. On 09.12.1998, Sube Singh and Hukum Singh came to their house and told them that Basanti was ill and had been admitted to a hospital. PW3 along with his mother, Sube Singh and Hukum Singh went to the house of accused persons and found that dead body of Basanti was being readied for cremation. On being asked by his mother, he informed the police.

During cross-examination, PW3 had stated that he had gone on 2-3 occasions to the house of accused persons and each time Basanti had told him that the accused persons used to harass and beat her on account of insufficient dowry. On return to his house, he had told his mother and uncle as to what Basanti had told him on each occasion. He denied that accused persons had never made any demand from Basanti nor had harassed her or beaten her.

15. PW1 is the mother of the deceased and PW3 is the brother of the deceased. They have specifically stated that deceased was harassed and meted with cruelty by the appellants on account of demand of dowry. In their testimony, they have given the specific incidents which duly prove that the deceased was harassed by the appellants for or on account of demand of dowry. They have stated specifically that after three months of marriage when deceased came to their house, she informed them that she was being

harassed and beaten by the appellants for bringing insufficient dowry. The deceased also told them that the appellants had been demanding a scooter and Rs.5,000/- in cash. PW1 has specifically stated that the deceased informed her that she was given fist blow by her mother-in-law on her face as a consequence of which, her teeth had broken. She had also specifically stated that the husband of her deceased daughter demanded Rs.5,000/- from the deceased and a scooter and Rs.5,000/- cash, which was given to the deceased after borrowing from her brother-in-law (PW2).

16. PW2 Suraj Bhan has corroborated that deceased told him that the appellants were demanding Rs.5,000/- cash and a scooter from the deceased. He also corroborated that about one month prior to the death of deceased, PW3 Smt.Sushila had asked for Rs.5,000/- which he had given to PW3 as the same was required to be given to the husband of the deceased, as the deceased was being harassed on account of demand of money. He had also stated that the parents-in-law of the deceased also used to harass her on account of inadequate dowry.

17. From the testimony of mother (PW1), brother (PW3) and uncle (PW2) of the deceased, it has duly been established beyond reasonable doubt that the appellants had harassed and meted the deceased with cruelty on account of demand of dowry.

18. Thus, the conviction of appellants under Section 498A/34 IPC needs to be upheld.

19. The appellants, apart from treating the deceased with cruelty on account of demand of dowry, have also been convicted for commission of dowry death.

20. 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.

21. 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 in normal circumstances; and

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

22. To constitute an offence under Section 304B IPC of dowry death, the presumption under Section 113B of the Evidence Act cannot be raised against an accused until independently the offence under Section 498A IPC is proved by leading evidence to the specific allegation with regard to time and date of such demand and cruelty and furthermore establishing the proximate live link between the effect of cruelty based on dowry demand and the death of the victim.

23. The factum of marriage of the deceased with the appellant no.1- Surender Singh is not under dispute. It is also not in dispute that the marriage of the deceased was solemnized with the appellant no.1-Surender Singh on 21.04.1997 and she died on

09.12.1998 i.e. after about one and a half year of marriage i.e. within seven years of her marriage with the appellant no.1.

24. In the present case, as discussed in the former paragraphs of this judgment, there is sufficient evidence to establish that the deceased was subjected to cruelty on account of dowry and that the appellants are guilty for the offence punishable under Section 498A/34 IPC.

25. Prosecution witness PW7 Dr. Komal Singh had deposed that he had conducted autopsy on the dead body of the deceased on 10.12.1998 and placed the post mortem report as Ex.PW7/A. As per the opinion of the doctor on the post mortem report Ex.PW7/A, the cause of death of the deceased was due to asphyxia on account of constricting force over the neck. On external examination of the dead body, ligature marks were found on the neck of the deceased.

26. From the opinion of the doctor (PW7) and the post mortem report Ex.PW7/A of the deceased, it has duly been established that the death of the deceased was not under normal circumstances as it was not a natural death, which duly proves another essential ingredient of Section 304B IPC.

27. Now the ingredient to be proved is whether the deceased was subjected to harassment or cruelty on account of demand of dowry soon before her death or not. To prove this aspect, the testimony of

mother and brother of the deceased are vital. Smt.Sushila Devi (PW1), mother of the deceased had deposed during her testimony before the Court that accused Surender used to ask for Rs.5,000/- and a scooter. She had borrowed Rs.5,000/- from her Devar and had given it to her deceased daughter about 15 days prior to her death. She told her daughter that it was beyond their means to give scooter in dowry.

28. From the testimony of Sushila Devi (PW1), mother of the deceased, there was demand of dowry in the form of a scooter and cash of Rs.5,000/- from the deceased about 15 days prior to the death of the deceased. This statement of the witness (PW1) duly covers the case of prosecution to bring it under the ambit of cruelty or harassment meted out to the deceased on account of demand of dowry, soon before her death. It is apparent from the cross-examination of PW1 that the defence had not disputed the said fact of harassment meted out to the deceased on account of demand of dowry soon before her death. No question or suggestion was put forth to the witness (PW1) to this effect which makes her testimony on this point unchallenged and uncontroverted.

29. Similarly, Suraj Bhan (PW2), uncle of the deceased has also corroborated the above fact during his deposition in the Court. PW2 had deposed that deceased Basanti was his niece. About one

month prior to death of Basanti, his Bhabhi Sushila had asked him for Rs.5,000/- and he had given the same to her. Sushila had told him that she needed the money to give to the husband of Basanti because accused Surender used to harass Basanti on account of demand of money. He further stated that Sushila told him that parents-in-law of Basanti also used to harass her on account of inadequate dowry.

30. The defence has failed to put any dent to his testimony to the effect that the deceased was harassed on account of demand of dowry by the appellants soon before her death. There is no cross-examination of this witness (PW2) to impeach his testimony. Thus, the testimony of PW2 is corroborative in nature to the testimony of PW1 and remained uncontroverted too.

31. From the unimpeached testimony of PW1 and PW2, it has duly been established that the deceased was subjected to cruelty and harassment for or on account of demand of dowry soon before death. Thus, the prosecution has successfully established another essential ingredient of Section 304-B IPC.

32. The contention of the appellants that the testimony of prosecution witnesses cannot be relied upon as the same are full of material contradictions holds no merit. From a careful reading of the testimony of prosecution witnesses, this Court finds that there

are minor contradictions in their testimony which is bound to occur due to passage of time. It is also not expected from a person to repeat the same facts as told by them to the police at the time of investigation. There are minor contradictions in their testimony but the same do not go to the root of the matter nor affect their credibility and same cannot be said to be material to discard the case of prosecution.

33. Another contention of the appellants is that there is delay in lodging the FIR. It has been contended that the incident had taken place at 1.00 p.m. on 09.12.1998 but the FIR was lodged on 10.12.1998 at 11.50 p.m.

34. The explanation offered by the prosecution in lodging the FIR on 10.12.1998 is that the SDM of the area was informed about the incident on the same day of incident i.e. 09.12.1998 who reached the spot. It has further been submitted that the SDM directed the police to produce the mother and brother of the deceased before him on 10.12.1998. On 10.12.1998, the statements Ex.PW1/A and Ex.PW3/A of Smt.Sushila (PW1) and Chand (PW3) respectively were recorded by the SDM. After recording the statements of PW1 and PW3, the SDM ordered registration of the case FIR in the present case and then the FIR of the instant case was registered. Thus, the prosecution has

adequately explained the delay which was caused in lodging the FIR and the same cannot in anyway said to be affecting the case of the prosecution.

35. From the totality of the discussion made above, this Court is of the considered opinion that the prosecution has successfully established its case against the appellants beyond reasonable doubt, that they had committed the dowry death of the deceased. All the ingredients of dowry death as provided in Section 304-B of IPC have duly been established. Thus, the conviction of appellants under Section 304-B/34 IPC deserves to be upheld.

36. On the quantum of sentence awarded to the appellants, this Court finds that the minimum sentence provided under Section 304-B IPC is seven years and the trial court has already taken a lenient view while awarding sentence of seven years imprisonment to the appellants for the offence under Section 304-B IPC and three years for the offence under Section 498-A IPC.

37. In view of the discussion made above, this Court does not find any ground to interfere with in the judgment of conviction and order on sentence passed by the trial court. The same are accordingly upheld.

38. Appellants are on bail. Their personal bonds and surety bonds stand cancelled. They are directed to surrender before the

trial court concerned within a period of 15 days to serve the remainder of sentence.

39. The appeal is disposed of accordingly.

(P.S.TEJI)
JUDGE

MARCH 06, 2017
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