

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

Date of Decision : May 12th, 2017

+ CRL.A. 566/2001
PARAMJIT KAUR Appellant
Through Mr.Ajay Verma, Adv. with
Ms.Divya Chugh, Advocates.

versus

STATE OF DELHI Respondent
Through: Mr. Panna Lal Sharma, Additional
Public Prosecutor for the State

AND

+ CRL.A. 606/2001
MANGAT SINGH Appellant
Through Mr.Ajay Verma, Adv. with
Ms.Divya Chugh, Advocates.

versus

STATE 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. Since both these appeals have been preferred against a common judgment of conviction and order on sentence, therefore, both these appeals are being decided together.

2. Aggrieved by the judgment of conviction dated 25.07.2001

convicting the appellants, namely, Paramjeet Kaur and Mangat Singh finding them guilty under Sections 304B/34 and 498A/34 IPC and order on sentence dated 28.07.2001 vide which the appellants were sentenced to undergo seven years rigorous imprisonment for the offence under Section 304B/34 IPC and also to undergo two years rigorous imprisonment for the offence under Section 498A/34 IPC with a fine of Rs.500/- each, and in default of payment of fine they were ordered to further undergo simple imprisonment for three months, the present appeals have been preferred.

3. The factual matrix emerging from the record is that deceased Jaswant Kaur was married to the accused Sher Singh on 24.11.1989 and after a few months into their marriage, the relations between the deceased and her in-laws started deteriorating wherein they treated her with cruelty for bringing insufficient dowry. On 01.09.1990, the in-laws of the deceased caused injuries on her person with some hot object and strangulated her. Thereafter, accused Sher Singh took the deceased who was in an unconscious state and admitted her to Batra Hospital where she remained in coma till 04.09.1990 after finally passing away. Hospital authorities informed the police who reached hospital and found the deceased unfit for statement. Baldev Singh, father of the deceased

also reached the hospital and on the basis of his statement, FIR of the instant case was registered.

4. In his statement made to the police, the complainant had stated that his deceased was married with accused Sher Singh on 24.11.1989. After about 3-4 months of her marriage, when deceased came to her parental home she informed them that her in-laws were harassing her with petty domestic matters. He further stated that the accused Sher Singh kept quiet every time the deceased complained to him. He had spoken to the accused Sher Singh in this regard but to no avail. On 30.08.1990, the deceased came to her parental home and informed her parents about the continued harassment on the part of her in-laws. On the subsequent date, accused Sher Singh came to his house to take back the deceased after giving an assurance of causing no harassment to the deceased. On 01.09.1990, he came to know that his daughter was admitted in a hospital.

5. During investigation, the police seized one knife and a nylon rope with hair stuck on it from the matrimonial home of the deceased. Accused persons were arrested and after completion of investigation, charge sheet was filed in the Court.

6. Charge under Sections 498A/304B/34 IPC was framed against both the appellants and **other accused persons, namely,**

Balwant Singh, Jageer Kaur, Sher Singh and Surjit Singh to which they pleaded not guilty. The prosecution had examined as many as 31 witnesses, namely, PW1 Baldev Singh, PW2 Dr.Dilshad Khan, PW3 Bihari Lal, PW4 Tarsem Kaur, PW5 Rajvinder Kaur, PW6 Ranjit Singh, PW7 B.K. Kaghroo, PW8 Ct.Sewa Ram, PW9 Smt. Santosh, PW10 Surjit Singh, PW11 HC Vikram Singh, PW13 Dr.Chander Kant, PW14 Dr.R.K. Mani, PW15 Kali Charan, PW16 HC Darshan Kumar, PW17 ASI Meer Singh, PW18 Insp.Davinder Singh, PW19 HC Roshan Lal, PW20 HC Darshan Kumar, PW21 Smt.Rajvinder Kaur, PW22 Satnam Singh, PW23 Ct.Rajbir, PW24 K.K. Arora, PW25 D.S. Chakoutra, PW26 Insp.Bhag Singh, PW27 Surjit Singh, PW28 Insp. Seeta Ram Meena, PW29 Insp.Davinder Singh, PW30 HC Jasbir Singh and PW31 Insp.Rajbir Singh.

7. The statements of the accused persons were recorded under Section 313 of the Cr.P.C. Accused persons examined DW1 Gopal Kishan Sharma as their defence witness.

8. The appellants were held guilty by the learned Additional Sessions Judge vide judgment of conviction dated 25.07.2001 and passed the order on sentence on 28.07.2001.

9. The grounds challenging the judgment of conviction are that there is no sufficient evidence against the appellants to hold them

guilty. The appellants were living separately to the deceased and were not present at the spot at the time of the alleged incident. The appellants never demanded any dowry nor harassed the deceased for or in connection with dowry. There are material contradictions in the testimony of prosecution witnesses which make the case of the prosecution doubtful. There is no direct or circumstantial evidence against the appellants to connect them to the incident of the present case. The deceased committed suicide and no role can be attributed to the appellants in commission of the same. The court below has wrongly convicted them under Section 498A/304B/34 IPC for the reasons that co-convict Sher Singh has been held guilty for commission of murder of the deceased. The ingredients of commission of murder and commission of dowry death are altogether different and when it has been held that co-convict committed the murder of the deceased, the appellants cannot be held guilty of commission of dowry death.

10. 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/34 IPC by the trial court. The father and 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.

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

12. In his testimony, PW1 Baldev Singh stated that deceased Jaswant Kaur was his daughter who was married to the accused Sher Singh on 24.11.1989. In the marriage they had spent sufficient amount as per their capacity. After 3-4 months into the marriage, whenever his daughter used to visit their house, she used to complain that Paramjit Kaur, Mangat Singh and Jagir Kaur used to tease her for petty domestic matters. She used to tell them that they were harassing her with an indication towards dowry. On 31.08.1990 accused Sher Singh came to their house and took the deceased back by assuring that there would be no harassment in the future.

13. PW4 Tarsem Kaur, mother of the deceased had stated that her daughter informed her that she was being harassed by Paramjit Kaur, Jagir Kaur and Mangat Singh for bringing insufficient dowry. She further stated that whenever she complained to the accused Sher Singh, he kept quiet. On 26.08.1990 she went to the matrimonial house of her daughter and saw accused Paramjit Kaur,

Surjit Singh, Jagir Kaur and Mangat Singh quarrelling with the deceased. PW4 brought her daughter to her house where she was told by her daughter that she was being harassed by her in-laws and was being pressurised to bring Rs. 20,000/- else she would be killed. On the same day evening, accused Sher Singh came to their house and took away her daughter. On 30.08.1990, her daughter came back to her house and complained that her in-laws were harassing her and abusing her. On 31.08.1990 accused Sher Singh came and when PW4 complained to him, he told them that he could not do anything and if something was given only then he would be able to persuade his family to desist from harassing the deceased. Her daughter asked her for some money in order to be able to live peacefully with her in-laws. PW4 had given Rs. 5,000/- and a gold chain to accused Sher Singh with the assurance that more payment would be made when her son Surjit Singh would come back from Dubai.

14. PW5 Rajvinder Kaur stated that the deceased was her sister. After some time into her marriage with accused Sher Singh, whenever her sister came to visit her maternal house she would complain about her *nanad*, mother-in-law and brother of husband teasing her for bringing insufficient dowry. On 30.08.1990 deceased came to their house and informed that apart from above

accused she was also being teased by the *nandoi* and his friend. She had also mentioned that if any harm was caused to her then dowry articles should be taken back. On 31.08.1990 accused Sher Singh came to their house to take the deceased back. On that occasion accused Sher Singh stated that if something was paid to his family members they would keep quiet and maintain peace with their daughter. Her mother gave Rs. 5,000/- in cash and a gold chain to accused Sher Singh with a promise to pay more on arrival of Surjit Singh from Dubai.

15. PW9 Smt. Santosh had deposed that the deceased was the sister of her husband. She had gone to Abu Dhabi after about a month of the marriage of deceased with Sher Singh. She had seen Jaswant Kaur writing and signing. She had stated that letter Ex. PW5/A was received by her in Abu Dhabi on 27.08.1990, being written by the deceased. On a telephonic conversation with the deceased, she was informed that she was not happy at her in-laws house.

16. PW10 Surjit Singh is the brother of the deceased who stated almost on similar lines as PW9 Smt. Santosh.

17. From the testimony of PW1, PW4, PW5, PW9 and PW10, it is amply clear that the deceased was being harassed by the appellants for demand of dowry. In their testimony, these

witnesses have deposed that after the marriage of the deceased with accused Sher Singh, she was harassed and teased by the appellants for or in connection with demand of dowry. They have stated that the appellants used to tease the deceased for bringing insufficient dowry. It is also stated by the witnesses that Tarsem Kaur, mother of the deceased gave Rs.5,000/- and a gold chain to the accused Sher Singh on a specific demand.

18. 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.

19. So far as the conviction of the appellants under Section 304B IPC for causing the dowry death of the deceased is concerned, it is a matter of record that co-convict Sher Singh has been held guilty under Section 302 IPC for commission of murder of the deceased. The Trial Court while extensively examining the material evidence and circumstances brought on record found Sher Singh guilty of commission of murder of deceased. It is worth mentioning that apart from convicting Sher Singh under Section 302 IPC he was also convicted under Section 304B IPC.

20. The Hon'ble Apex Court in the case of ***State of Punjab v.***

Iqbal Singh and Ors. (1991) 3 SCC 1 observed as under :

“8. ...The legislative intent is clear to curb the menace of dowry deaths, etc., with a firm hand. We must keep in mind this legislative intent. It must be remembered that since crimes are generally committed in the privacy of residential homes and in secrecy, independent and direct evidence is not easy to get. That is why the legislature has by introducing Sections 113A and 113B in the Evidence Act tried to strengthen the prosecution hands by permitting a presumption to be raised if certain foundational facts are established and the unfortunate event has taken place within seven years of marriage. This period of seven years is considered to be the turbulent one after which the legislature assumes that the couple would have settled down in life. If a married women is subjected to cruelty or harassment by her husband or his family members Section 498A, Indian Penal Code would be attracted. If such cruelty or harassment was inflicted by the husband or his relative for, or in connection with, any demand for dowry immediately preceding death by burns and bodily injury or in abnormal circumstances within seven years of marriage, such husband or relative is deemed to have caused her death and is liable to be punished Under Section 304B, Indian Penal Code. When the question at issue is whether a person is guilty of dowry death of a woman and the evidence discloses that immediately before her death she was subjected by such person to cruelty and/or harassment for, or in connection with, any demand for dowry, Section 113B, Evidence Act provides that the court shall presume that such person had caused the dowry death. Of course if there is proof of the person having intentionally caused her death that would attract Section 302, Indian Penal Code. Then we have a situation where the husband or his relative by his wilful conduct creates a situation which he knows will

drive the woman to commit suicide and she actually does so, the case would squarely fall within the ambit of Section 306, Indian Penal Code. In such a case the conduct of the person would tantamount to inciting or provoking or virtually pushing the woman into a desperate situation of no return which would compel her to put an end to her miseries by committing suicide.
...”

21. The scope of convicting an accused under Section 302 IPC i.e. for commission of murder and Section 304B IPC i.e. dowry death are altogether different. The ingredients of both these Sections are also separate. In convicting an accused under S. 302 IPC, the prosecution is bound to prove its case either by way of direct evidence or with the connecting chain of circumstances, whereas convicting an accused for commission of dowry death specific circumstances are to be established. In the present case, since co-convict Sher Singh has already been convicted under Section 302 IPC by treating the death of deceased as murder, no case is made out against the appellants to convict them under commission of dowry death of the deceased. Thus, the conviction of the appellants under Section 304B/34 IPC and order on sentence is set aside.

22. 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.

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

24. Apparently, the death of the deceased had taken place on 04.09.1990; the charge was framed on 10.07.1992 and 28.09.1995 against appellants Mangat Singh and Paramjit Kaur respectively; judgment of conviction was passed on 25.07.2001; order on sentence was passed on 28.07.2001; 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.

25. The appeals are disposed of accordingly.

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

(P.S.TEJI)
JUDGE

MAY 12, 2017
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