

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

+ Crl.Appeal No.614/2001

Date of Decision: May 25, 2017

RAKESH & ANR. Appellants

Through Ms.Manika Tripathy Pandey and
Mr.Ashutosh Kaushal, Advs.

versus

STATE OF DELHI 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 382 Cr.P.C. against judgment and order on sentence dated 25.07.2001 whereby the appellants have been found guilty and convicted for the offence punishable under Section 498A and 304B and sentenced to undergo RI for seven years each for the offence under Section 304B IPC and to undergo RI for six months each and to pay fine of Rs.5,000/- each, in default to undergo SI two months for the offence under Section 498A IPC.

2. The facts of the case, as per the case of the prosecution, in a nutshell are that on 06.11.1996 an intimation was received vide DD No.43 at 10.20 P.M. through wireless that near house no.204/a, Chota Bazar, Gudia Mohalla, Circular Road, Shahdara, Delhi a women had set herself ablaze and had been removed to JPN Hospital at 10.55 P.M. She died on the next day. FIR was registered on 07.11.1996. Post mortem was conducted and the SDM recorded the statement of the brother of the deceased and ordered the registration of a case under Section 304B and 498A of IPC. After investigation, the charge sheet was filed against appellant No.1/Rakesh (husband of the deceased) and appellant No.2/Kamla (Mother-in-law of the deceased). The case was later committed to the court of sessions.

3. Vide order 13.05.1998, charge under Sections 304B/34 IPC & 498A/34 IPC was framed against both the accused persons to which they pleaded not guilty and claimed trial.

4. In support of its case, the prosecution examined 22 witnesses in all. PW-1 Smt.Shanti Devi, PW-2 Musadi Lal, PW-

3 Prithvi Raj, PW-4 Jai Kumar, PW-5 Maden Sen, PW-6 HC Chaman Singh, PW-7 Trilok Chand, PW-8 Shiv Kumar, PW-9 Const.Madvi, PW-10 Const.Sita Ram, P-11 HC Suresh Kumar, PW-12 Const.Mitender Kumar, PW-13 Const.Jitender Kumar, PW-14 Const.Sanjay Kumar, PW-15 Deepak Virmani, PW-16 Const.Rajbir Singh, PW-16 Doctor Shyambir Singh, PW-17 Lady Const. Shahsi, PW-18 Sh.Ajay Garg, PW-19 P.S.Bhandari, PW-20 HC Jagdish Chander, PW-21 ASI Gajender Singh and PW-22 Dr.Usha

5. After conclusion of recording of evidence, statement of accused persons under Section 313 Cr.P.C.were recorded.

6. Vide the impugned judgment and order on sentence dated 25.07.2001, appellants were found guilty and convicted for the offence punishable under Section 498A and 304B and sentenced to undergo RI for seven years each for the offence under Section 304B IPC and to undergo RI for six months each and to pay fine of Rs.5,000/- each, in default to undergo SI two months for the offence under Section 498A IPC. Hence the present appeal.

7. In support of the appeal, the appellants/accused have taken the grounds that the Trial Court has erred in law as the appellants have been convicted without appreciation of reliable evidence in the form of testimonies of the prosecution witnesses; that PW-2 has denied any knowledge of any harassment and ill-treatment meted out to the deceased; that the learned Trial Court could not appreciate the evidence of dying declaration recorded by the attending doctor; that the dying declaration made by the deceased was not put before the appellants in their examination under Section 313 Cr.P.C.; that the delay of a day in lodging the FIR casts a shadow of doubt at the entire prosecution story; that the Trial Court also did not consider the MLC of the appellant No.1 which shows that the appellant No.1 received 25% of burn injuries in the course of saving the deceased.

8. On the contrary, learned Additional Public Prosecutor for the State has vehemently opposed the aforesaid contentions raised on behalf of the appellants 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.

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

10. PW-1 Shanti Devi is the mother of the deceased. She deposed that after the marriage of her daughter, her daughter used to make complaints against her husband and mother-in-law that they used to demand dowry i.e. Rs.20,000/-, colour TV, Mixi and fridge. However, in the marriage, she had given whatever she could afford. She deposed that her daughter used to tell her that the accused persons used to harass her and also gave beatings to her.

11. PW-3 is Prithvi Raj, who is the brother of the deceased. He deposed that his sister got married on 01.12.1995 with the appellant No.1 according to hindu rites and ceremonies and a sum of Rs.35,000/- was spent on their marriage. He deposed that after 2-3 months of their marriage, when his sister came to her parental house, she told that appellant No.1 was demanding Rs.20,000/-. He deposed that after 2-3 months, Rakesh himself

came to his house and demanded Rs.20,000/- again. However, he showed his inability to pay the money, but regular demands of colour TV, fridge, mixi and gas were made. Subsequent thereto, both the appellants started giving beatings to his sister. He also deposed that his sister used to tell him that her mother-in-law used to harass her. At the time of Diwali, which was on 06.11.1996, his sister received burn injuries and this information was given to him by the mediator/middleman Musadi Lal. He deposed that he went to the hospital on receipt of this information along with his mother, wife, brother Jai Kumar and cousin brother where he found his sister lying in an ambulance. They remained at the hospital throughout the night and on the next day, his sister Saroj expired in the noon. In his cross examination, he denied that his sister was suffering from menstrual disorders.

12. PW-4 Jai Kumar is another brother of the deceased. He deposed that after seven months of the marriage, appellant No.1 started harassing his sister and used to give beatings to her. As to the demand of dowry, he testified on the same lines as was

done by PW-3 Prithvi Raj.

13. PW-6 is HC Chaman Singh. He deposed that on 06.11.1996 at about 10.30 P.M. he received DD No.43 with regard to the fact that a lady had put herself on fire at house no.204/1, Gudai Mohalla, Shahdara. On receipt of the said DD, he along with Const. Sanjay went to the spot where he came to know that the injured had already gone to an unknown place and no witness of the incident appeared in the meantime. He deposed that DD No.50 was handed over to him by Const. Surat with regard to the fact that the injured had been admitted in JPN hospital. He deposed that he collected the MLC of appellant No.1/Rakesh and deceased Saroj; inspected the spot along with ASI Gajender at the instance of PW-2/Musadi Lal; prepared the site plan; took into possession one cot which was in burnt condition and one plastic can with some kerosene oil in it vide ExPW6/B; He also deposed that he took possession of one bag, another can with some burnt clothes & one matchbox with some match sticks vide ExPW6/D.

14. PW-8 is Shiv Kumar. He deposed that near Diwali at

about 10 P.M. when he was present at his house, his neighbor knocked his door and told him that a room has been set on fire and appellant No.1/Rakesh and the deceased/Saroj were inside the room. He deposed that he along with other persons opened the door where they saw that Saroj had caught fire and he immediately took her to General Hospital. In cross-examination, he deposed that he had extinguished the fire on entering inside the room where she had caught fire. He further deposed that Rakesh had become unconscious while trying to extinguish the fire and Rakesh had also sustained burn injuries while extinguishing the fire. He deposed that on enquiry, the deceased told him that she had set herself on fire because she remained sick.

15. PW-16 is Doctor Shyambir Singh. He deposed that he had conducted the post mortem on the dead body of the deceased at 11 AM. He opined that the death in the instant case is due to burn shock consequent upon 98% burn injuries of the total body surface area. He also deposed that all the injuries were ante mortem and recent in duration. All the injuries were

caused by burns due to fire.

16. PW-16 is ASI Gajender Singh. He deposed that on the directions of the SHO Sh.Rishi Pal Singh, he went to JPN hospital where HC Chaman Singh and Const. Sanjay met him in the hospital where he met mother and brother of the deceased who told him that they would make the statement before the SDM. On 07.11.1996, the mother and brother of the deceased made their statement in the office of SDM. In the cross-examination, he deposed that he did not see any blood stain or blood clot at the place of occurrence. He further deposed that none of the neighbours of the accused told him that there was any difference on account of demand of dowry between the appellant No.1/accused and the deceased. He also deposed that the deceased party did not produce any list of dowry articles to him during investigation.

17. PW-22 is Dr. Usha who deposed that the deceased had 100% burn injuries and smell of kerosene was present on her body. In her cross-examination, she deposed that the deceased had given alleged history mentioned in the MLC and the history

had been given by the deceased herself where she said that she had poured kerosene on herself due to irritation of prolonged illness of self and then set herself ablaze.

18. From the testimony of PW1, PW3 & PW4, it is amply clear that the deceased was being harassed by the appellants for or in connection with demand of dowry. In their testimony, these witnesses have deposed that after the marriage of the deceased with the appellant Rakesh, 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 Rs.20,000/-, colour TV, mixi and fridge from the deceased and for the same, they used to harass her and give beatings to her.

19. 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.

20. 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.

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 normal circumstances; and

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

22. As far as death of the deceased Saroj is concerned, it is not in dispute that she died due to 100 per cent burn injuries which shows that the death of the deceased was not under normal circumstances which fulfils the first ingredient for the commission of offence under Section 304B IPC.

23. The second ingredient that death of the deceased had taken place within seven years of her marriage with the appellant Rakesh is established from the evidence, as marriage

had taken place on 01.12.1995 and her death took place on 07.11.1996 i.e. within a year of her marriage.

24. 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, PW3 & PW4 to prove these ingredients. PW1 happened to be the mother of the deceased, PW3 and PW4 happened to be the brothers of the deceased. The detailed discussion of their testimony has already been made.

25. 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 appellants with the said harassment or cruelty meted out to the deceased “soon before her death”.

26. 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.”

27. 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.

28. 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.

29. It has been brought on record that the appellants remained behind the bar during trial from 08.11.1996 to 06.03.1997 and post conviction from 25.07.2001 to 12.07.2004, the date when their sentence was suspended by this court.

30. 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.

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

32. Apparently, the death of the deceased had taken place on 07.11.1996; the charge was framed on 13.05.1998; judgment of conviction and order on sentence was passed on 25.07.2001; the appellants have faced the agony of protracted trial for about 21 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 period already undergone by them. It is held accordingly.

33. The appeal is disposed of accordingly.

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

(P.S.TEJI)
JUDGE

MAY 25, 2017