

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

+ **Crl.Appeal No.661/2001**

Date of Decision: 22nd May, 2017

HOMPAL SINGH & ORS. Appellants

Through Mr.R.M.Tufail,
Mr.Farooq Chaudhary,
Mr.Vishal Raj Sehijpal,
Ms.Meenakshi Joshi and
Ms.Astha, Advs.

versus

STATE OF DELHI Respondent

Through Mr.Akshai Malik, APP.

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

P.S.TEJI, J.

1. The present appeal has been filed under Section 389 Cr.P.C. against judgment and order on sentence dated 06.09.2001 whereby the appellants have been found guilty and convicted for an offence punishable under Section 304B IPC and sentenced to undergo rigorous imprisonment for ten years each.

2. The facts of the case, as per the case of the prosecution, in a nutshell are that on 01.09.1995 an intimation was received

vide DD No.15A at 8.45 P.M. that one lady by the name of Rita had been admitted in the GTB hospital in an unconscious condition. The said DD was marked to SI Sher Singh who proceeded to the hospital along with Const.Naresh at 12 in the night, intimation regarding the death of said Rita was given vide DD No.20A. On 02.09.1995, the SDM visited the hospital and conducted the inquest proceedings. On 04.09.1995, the SDM recorded the statements of father and brother of the deceased and directed registration of the case which gave rise to the present FIR bearing No.298/1995.

3. The post mortem was conducted on the body of deceased Rita where the doctor opined that the cause of death was consumption of organo phosphorous poison.

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

5. Vide order 06.09.1996, charge under Sections 406/34 IPC, 498A/34 IPC and 304B/34 IPC was framed against all the accused persons to which they pleaded not guilty and claimed trial.

6. In support of its case, the prosecution examined 17 witnesses in all. PW-1 SI Daulat Ram, PW-2 Sheela Devi, PW-3 Ramakant,

PW-4 Dr.Anil Kohli, PW-5 HC Satpal Singh, PW-6 Const.Rajni, PW-7 Const. Mahesh, PW-8 ASI Subedar Singh, PW-9 SI Sher Singh, PW-10 J.Ramana Reddy, Junior Scientific Officer, PW-11 Sh.K.K.Dahiya, PW-12 HC Ravinder Kumar, P-13 Const.Rajender Singh, PW-14 Dr.T.S.Daral, PW-15 SI Devi Charan, PW-16 HC Abhay Singh and PW-17 Const.Jagdish.

7. In support of their case, the accused examined eight witnesses.

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

9. Vide the impugned judgment and order on sentence dated 06.09.2001, all the accused except Smt.Sushila, who was acquitted of the charged offence, were convicted under Section 304B IPC and sentenced to undergo RI for ten years. Hence the present appeal.

10. In support of the appeal, the appellants/accused have taken the grounds that there is no legal evidence against the appellants justifying their conviction, that there has been inordinate and unexplained delay of three days in lodging the FIR which made the entire prosecution case suspicious; that the evidence rendered by the related witnesses of the deceased was self-contradictory and unreliable; that the medical evidence does not support the prosecution case as the 'organo phosphorous compound' which was found in the

viscera of the deceased, is commonly found in the insecticide which is normally used in the household for keeping away pests, grain insects etc.; that the investigation has not been fair to invoke confidence and the document Ex.PW11/B, which is in the handwriting of the S.D.M., records that “her parents have alleged foul play in her death”. This document is dated 02.09.1995 on the contrary PW-1 to PW-3 have in clear terms stated that they never met the S.D.M before 04.09.1995, that the co-appellant Arvind, husband of the deceased, had himself removed his wife Rita (deceased) to the hospital which shows that the deceased was well looked after in her matrimonial house; that there is no independent corroboration to the testimony of PW-1 to PW-3 and that the judgment of the Trial Court is otherwise based on conjecture and surmises.

11. 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.

12. Arguments advanced by the learned counsel for the appellant

as well as learned APP for the State were heard.

13. PW-1 Daulat Ram is the father of the deceased. He has deposed that Mr.Hompal, father in law of the deceased, told them at the time of marriage that saptapadi would not be performed unless colour TV and scooter were given to them. A quarrel took place on this issue and further marriage ceremonies were stopped. However, later with the intervention of the baratis and people from the side of girl, marriage and bidai ceremony were performed. He further deposed that after marriage, his daughter came to his house on the occasion of Rakhi where he found the physical condition of his daughter had deteriorated and he enquired from her whether she was happy in her matrimonial home, to which his daughter told him that there used to be quarrels all the time on the issue of colour TV and scooter and everybody used to harass her for this demand. He also deposed that on the occasion of Rakhi, when his daughter came to her parental house, she was told to bring Rs.31,000/- in cash, otherwise she should not come back to the matrimonial house. He also deposed that in his absence a call was received by his son that nobody from the parental house of the deceased should visit the accused and if anybody does that, their legs shall be broken. On 01.09.1995 at about 10 PM, a telephone call was received at the house of his son's friend

informing that his daughter was in a critical condition and that they were being called. When they reached at the gate of house of the accused, they were told by Usha, wife of Ashwini, brother in law of the deceased, that the condition of the deceased was critical. While they were on the way to the hospital, they came to know that their daughter had expired.

14. PW-2 Smt. Sheela Devi is the mother of the deceased. She also deposed on the same lines as her husband (PW-1) with respect to the demand of dowry from her deceased daughter.

15. PW-3 Ramakant also made statements similar to that of PW-1 and PW-2.

16. PW-4 is Dr. Anil Kohli. He deposed that he had conducted post mortem on the dead body of the deceased and opined that the cause of death of the deceased was poisoning with organo phosphorous poison. He deposed that the ante mortem injuries found on the person of deceased could be caused during administering medicine to her while trying to restrain her.

17. From the testimony of PW1 to PW3, 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 Arvind Kumar, 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 scooter, TV and cash 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 PW-1 and PW-2 that the appellants had demanded cash of Rs.31,000/- from them which they were unable to give.

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, 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.

20. 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.

21. As far as death of the deceased Rita is concerned, it is not in dispute that she died due to consumption of poison 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.

22. The second ingredient that death of the deceased had taken place within seven years of her marriage with the appellant Arvind Kumar is established from the evidence, as marriage had taken place on 02.07.1995 and her death took place on 01.09.1995 i.e. within a year of her marriage.

23. 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 PW3 to prove this ingredient. PW1 happened to be the father of the deceased, PW2 happened to be the mother of the deceased and PW3 happened to be the brother of the deceased. The detailed discussion of their testimony has already been made.

24. 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”.

25. 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.”

26. 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.

27. 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.

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

29. 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.

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

31. Apparently, the death of the deceased had taken place on 01.09.1995; the charge was framed on 06.09.1996; judgment of conviction and order on sentence was passed on 06.09.2001; the appellants have faced the protracted trial for about 22 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 undergo RI for a period of two years. It is held accordingly.

32. The appellants are already on bail. Their bail bonds and surety bonds are discharged.

33. The appeal is disposed of accordingly.

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

(P.S.TEJI)
JUDGE

MAY 22, 2017

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