

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment delivered on : April 11, 2017

+ CRL.A. 842/2002
MANJU DEVI Appellant

Through: Mr.Imran Khan, Advocate.

versus

STATE Respondent

Through: Mr.Panna Lal Sharma, Additional
Public Prosecutor for the State with
Sub-Inspector Roshan Lal, Police
Station Nangloi, Delhi.

+ CRL.A. 976/2002
ARUN KUMAR S/O RAM BHAROSE Appellant

Through: Mr.Neeraj Bhardwaj, Adv.

versus

STATE Respondent

Through: Mr.Panna Lal Sharma, Additional
Public Prosecutor for the State with
Sub-Inspector Roshan Lal, Police
Station Nangloi, Delhi.

+ CRL.A. 282/2003
RAM BHAROSE & ANR. Appellant

Through: Ms.Usha Saxena, Advocate for
Mr.O.P. Saxena, Advocate.

versus

STATE GOVT. OF NCT OF DELHI Respondent

Through: Mr.Panna Lal Sharma, Additional
Public Prosecutor for the State with
Sub-Inspector Roshan Lal, Police
Station Nangloi, Delhi.

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

JUDGMENT

P.S.TEJI, J.

1. By these three separate appeals filed under Section 374 of Cr. P.C., the appellants seek to challenge the judgment dated 17.07.2002 as well as order on sentence dated 18.07.2002, passed by the learned Additional Sessions Judge, Delhi in Sessions Case No.34/2000 (FIR No.177/2000), whereby the learned Additional Sessions Judge had convicted the appellants for the offence punishable under Section 498-A/304-B/34 of IPC and vide order on sentence dated 18.07.2002 the appellants have been sentenced to undergo rigorous imprisonment for 3 years and fine of Rs.5,000/- each for the offence under Section 498-A/34; and in default of payment of fine they were ordered to undergo further rigorous imprisonment for a period of six months. In addition, the appellants have been sentenced to undergo rigorous imprisonment for seven years each for the offence under Section 304-B/34 of IPC. The husband was additionally charged with an alternate charge under Section 306 of IPC for abetting his wife Pratima Gupta to commit suicide.

2. Since the FIR as well as impugned order in all the three appeals are same, therefore, with the consent of the counsel appearing on behalf of all the appellants, arguments in all the appeals are heard together and all the appeals are being disposed of by this common order.

3. The case at hand, is yet another case in which a married lady took her life in just two years of her matrimonial life, due to demand of dowry and torture from her in-laws, which is so alleged by the complainant – Lalji Gupta (father of the deceased), in the FIR in question. Appellant – Arun Kumar is husband, appellant – Ram Bharose is father-in-law and appellant - Manju is mother -in-law and appellant – Anil Kumar is brother-in-law (dever) of the victim. According to the complainant, the daughter of the complainant was married to appellant – Arun Kumar in the month of June 1998 and soon after the marriage all the appellants subjected his daughter to cruelty and harassed her for demand of dowry and ultimately on 02.03.2000, his daughter Pratima Gupta died due to burn injuries. It was shown that soon before her death she was subjected to cruelty by the appellants in connection with demand of dowry.

4. The facts as enumerated from the judgement of the trial court are that the daughter of Lalji Gupta – Pratima @ Pinki was married to appellant – Arun Kumar Gupta and a letter written by Lalji Gupta had been sent stating that he was coming to Delhi to take back his daughter. As a result of that letter, he reached Delhi on 28.02.2000 and met the appellants and requested them to send his daughter with him but the appellants refused and thereafter again on 02.03.2000 at about 10 AM, he reached the house of his daughter and requested his son-in-law to send his daughter with him but his son-in-law started quarrelling with him and when the complainant wanted police help for taking his daughter with him, he was threatened that he will do

something (*gyada karoge to ham kuchh kar dalenge*). Thereafter, the complainant went to the police post to seek police help and in his absence when he was on the way to the police post his daughter was murdered by appellants – Arun Kumar, Ram Bharose, Manju and Anil Kumar. According to the complainant when he had met his daughter in the morning she was alright.

5. On the basis of the aforesaid complaint, a case under Section 304-B/498-A of IPC was registered by the police. The complainant has also alleged in his complaint that a sum of Rs.5,000/- was demanded by the appellants but complainant refused to do so. It was also alleged that after a few days of the marriage his daughter was being harassed in connection with demand of dowry.

6. After completion of the investigation, charge sheet was filed against the appellants and charges under Section 498-A/304-B/34 of IPC were framed against them. To prove the charges against the appellants, the prosecution examined 14 witnesses. They are, Dr. K.L. Sharma (PW-1); Smt. Basanti Kumari (PW-2); Mr. Lalji Gupta (PW-3); Mr. Suresh (PW-4); Siri Ram (PW-5), Head Constable Darshan (PW-6); Mr. Harish (PW-7); Head Constable Bhagwati Parshad (PW-8), Mr. Raj Kumar (PW-9); Mr. E. Raja Babu, SDM (PW-10); constable J.S. Chahar (PW-11), Constable Joginder (PW-12); ASI - Mr.A.K.Singh, NIC, FSL Rohini (PW-13), and ASI Hardeep Singh (PW-14).

7. After conclusion of prosecution evidence, all incriminating

material was put before the appellants and their statements under Section 313 Cr.P.C. were recorded. Though the appellants have admitted the fact that Pratima was married to appellant – Arun Kumar they have denied that she was harassed or tortured on account of demand of dowry. They also denied that dowry was ever demanded from the parents of the deceased or that she was not allowed to visit her parent's house. According to appellant – Arun, he and his family members never demanded any dowry including gas, fridge, etc. He also stated that his wife was happy with him at his house. The father of the deceased wanted to take his daughter forcibly and had a separate talk with his daughter. But his daughter did not want to go with her father and relatives. However, other appellants have taken the plea of alibi and stated that they were not present at the spot when the occurrence had taken place as they had gone to the market. No defence evidence was led by the accused persons.

8. After considering the facts, evidence led and the material on record, the learned Additional Sessions Judge held the appellants guilty for an offence punishable under Sections 498-A/304-B/34 of IPC by an order dated 17.07.2002, and vide order on sentence dated 18.07.2002, appellants were sentenced as indicated above. Hence, the appellants have filed the instant appeals against the judgment and order on sentence passed by learned Additional Sessions Judge.

9. The appellants – Ram Bharose and Anil Kumar @ Monu have challenged the judgment of conviction and order on sentence, inter alia, contending that the quarrel was between the egos of the father

and husband of the deceased which led the deceased to finish her life; there is not even a single word mentioned against appellant – Anil Kumar (Dever) regarding demand of any dowry, torture, misbehave or involvement in death of the deceased. It is further contended on behalf of these appellants that the ingredients of Section 304-B are not fulfilled. With regard to the testimonies of prosecution witnesses, it is contended that they are interested witnesses who deposed against the appellants. The fact was that the father of the deceased was adamant to take his daughter back but the deceased was not ready to go with him, hence there was dispute between the husband and the father of the deceased due to which the deceased committed suicide. Apart from the aforesaid, contradiction in the deposition of PW-2, PW-3, PW-5, PW-6 and PW-9 were contended. It is further contended that the appellants were not present at the spot and the prosecution has not even examined any independent witnesses.

10. The appellant – Arun Kumar contended that the bold statements of PW-2 and PW-3 are not sufficient to convict the appellant and his parents. No dying declaration of the deceased is on record and the evidence and material on record do not support the prosecution case, therefore no case under Section 304-B IPC is made out. He further contended that the sequence of events as narrated by the complainant are highly improbable, unnatural and unbelievable. Even the letter written by the deceased Pratima (Ex.PW-3/B) is not reliable as the handwriting and signatures of the victim could not be compared by the Finger Print/Hand writing expert with the admitted writings and

signatures of the victim. PW-4 - Suresh and PW-9 – Raj Kumar are tutored witnesses, their statements are full of contradictions and discrepancies and the same are liable to be discarded. In support of the aforesaid contention on behalf of the appellants, learned counsel for the appellant – Arun Kumar relied on the judgment in the case of *Satvir Singh and Others vs. State of Punjab & Others*, (2001) 8 SCC 633.

11. The appellants have filed the instant appeals challenging the aforesaid judgment on conviction as well as order on sentence. During pendency of the present appeal, the sentence imposed upon the appellants were suspended vide order dated 06.01.2006.

12. Per contra, learned Additional Public Prosecutor for the State has vehemently opposed the aforesaid contentions raised on behalf of the appellants and submitted that the offences with which the appellants have been charged are the crimes against society. In this case, a young lady has been tortured and faced with cruelty and was being harassed on account of demand of dowry from the appellants due to which the victim got the burn injuries and lost her life within just two years of her marriage, therefore, the judgment 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.

13. I have heard the submissions made on behalf of both the sides and also gone through the evidence as well as material placed on

record. Perusal of the impugned judgment reveals that the learned Additional Sessions Judge has based the conviction of the appellants on the testimonies of mausi - Smt. Basanti Kumari (PW-2), father – Lalji Gupta (PW-3), uncle – Suresh (PW-4), Raj Kumar (PW-9), SDM – Sh. H. Raja Ram (PW-10). This court further observes that in the present case, a lady has died within two years of her marriage in her matrimonial home, and the appellants were charged with and convicted for the offence under Section 498-A/304-B/34 of IPC, which is a social crime against the society. In such a situation, this court needs to analyze the deposition of the material witnesses afresh to find out any irregularity or infirmity in the order passed by learned Additional Sessions Judge, if any.

14. From the material placed on record, this court finds that the present case was registered on the statement of father of the victim – Lalji Gupta (PW-3), who in his statement recorded before the court had deposed that the marriage of his daughter Pratima was solemnized with appellant – Arun Kumar on 17.06.1998 and after marriage his daughter went to live in her matrimonial house at Nihal Vihar, Nangloi. He deposed that for first four months of marriage nothing abnormal happened but after four months when he visited the house of the appellants in Delhi, appellant – Ram Bharose demanded Rs.20,000/- from him, which he could not fulfill. He further deposed that his daughter Pratima had told him that she was being harassed and he should fulfill the demands of Ram Bharose. In his deposition he specifically deposed that the appellant – Manju asked him either to

give a fridge or pay the money and at that time appellant Arun and Anil had not demanded anything. After about five months, when he again went to Delhi, the appellant – Ram Bharose demanded Rs.5,000/- from him but he could not give the money. He wanted to take Pratima to his house but since he could not pay the money, all the four appellants got annoyed with him and they did not send Pratima with him and did not allow him to talk to her either. He further deposed that on 02.03.2000 he was accompanied with his uncle Siri Ram, Aunty Basanti and brother-in-law Raj Kumar and visited the house of the appellants at about 10/10.30 AM. He requested the appellant – Ram Bharose to send Pratima with him, on which he asked him to seek permission from appellant – Manju, who in turn told him to contact appellant – Arun. When he repeated his request and insisted that Pratima should be sent with him, then all the four appellants including Anil started quarrelling with them. Thereafter, he alongwith his uncle, aunty and brother-in-law went to Police Post Nihal Vihar. When he was about to go to the Police post, the appellant – Arun Kumar threatened '*Jayada karoge to kuch kar dalenge*'. On his complaint, the police left for house of the appellants immediately and returned within ten minutes and informed that Pratima was dead. He further deposed that when he had left the house of appellants for going to P.P., his daughter Pratima was absolutely alright and on his return he saw charred body of Pratima in the kitchen. The dead body was lying on the first floor and appellant – Manju Devi was found sitting on the ground floor. No other accused was present there. The witness Lalji Gupta (PW-3) had also brought the letter dated 21.02.2000

(Ex.PW-3/B), which was received by him after death of Pratima. It was in the handwriting of his daughter Pratima and bore her signatures as Pinki, as Pratima was also known as Pinki.

15. The other relevant witness is Suresh (PW-4), who was the uncle of the deceased Pinki @ Pratima. He deposed in his statement that he had gone to the accused persons at about 9.00/9.30 AM with Lalji, who requested Ram Bharose to send Pratima, but accused Ram Bharose left it to accused Arun Kumar, who asked Lalji to ask Pratima if she wanted to go or not. When Pratima was asked, she stated that she would do whatsoever was wished by accused – Arun. At that time, Arun Kumar caught hold of the arm of Pinki and challenged them to take her if he had the courage. Then he and Lalji decided to go to P.P. He along with Lalji and his father Siri Ram and Aunty Basanti went to P.P. Someone came running to P.P. to inform that fire had broken out. Thereafter, police went to house of the accused persons. He alongwith Lalji had also accompanied the police. At the spot he saw the dead body of Pinki in a burnt condition. He further deposed that all the four accused persons were present when he along with Lalji had gone to their house to fetch Pinki.

16. Siri Ram (PW-5) is one of the person who, on the date of incident, visited the house of the accused persons alongwith father, aunty Basanti, Raj Kumar and Suresh. He had deposed that all the appellants were present there and were ready to quarrel with them. He further deposed that all the four accused persons demanded Rs.50,000/- and flatly refused to send Pinki. Thereafter, they went to

P.P. where they came to know that Pinki was killed by burning. He never had any talk with Pinki during her lifetime as he was not allowed to enter her house by the accused.

17. Raj Kumar (PW-9) had deposed before the court that at the house of accused persons, father of Pratima asked accused persons to send Pratima, whereupon accused persons refused to send Pratima. Father of Pratima again and again requested, on which accused persons started abusing them. He asked father of Pratima to approach police. In the meantime accused Arun pulled Pratima by her hand and brought her outside the house. Thereafter accused Arun threatened that if we would take any step then Pratima would meet with dire consequences. He further deposed that they all went to PP Nihal Vihar, when complaint was being lodged at PP, his brother-in-law Suresh informed that there was a fire in the house of accused persons. They all returned to house of accused and found Pratima dead. Accused persons had murdered Pratima.

18. Smt. Basanti Kumari (PW-2) had deposed in court that on the day of occurrence, she accompanied by Lalji and his cousin Raju and went to the house of accused persons at about 9.30 AM. All the accused persons were found present in house. She requested the accused Arun and his parents to send Pratima to her parents house, but they refused to send Pratima. She again requested, but they did not agree and retorted that they did not continue any relations with them. She further deposed that parents of accused Arun asked for Rs.15/20,000/- but even then they were not ready to send Pratima. In

her deposition she further stated that the accused Ram Bharose, his wife Manju and younger son Anil started quarreling with them, hurled abuses and were ready to give beating to them but still she pleaded with the accused to send the girl and assured that Lalji himself would bring the girl to their house and accused had refused. She further deposed that on the day of occurrence when they had gone to house of accused and pleaded to send Pratima, the accused persons hurled abuses and accused Arun caught Pratima by her upper arm and offered her to us. They asked him to send Pratima in respectful way and not in that manner. Thereafter, she alongwith Lalji went to P.P. Nihal Vihar. Two police officials returned to P.P within a couple of minutes and informed Pratima was killed by burning. She further deposed that once Pratima had visited her in her house at Shahdara, at that time she had complained that accused Ram Bharose had tried to molest her, under threat of life.

19. K.L.Sharma (PW-1) is a Senior Chief Medical Officer, Incharge Subzi Mandi Mortuary who deposed before the court that on 03.03.2000, he conducted the post mortem on the body of Smt. Pratima. The clothes found over the dead body were burnt residue of petticoat with naara which were cut and preserved and had smell of Kerosene Oil. There was liquid blood coming out of nostrils. The dead body was under pugilistic attitude, in which the hands were flexed at wrist joint and arms at elbows joints and thighs were flexed at hips and the legs were flexed at knee joint. There was partial skin thickness burns present all over the body with blackening, full thickness burns

were also present at places and the skin of the hands and feet was coming out like gloves. The scalp hair were partially burnt and there was a smell of kerosene oil present in the scalp hair. Axillaries hair, pubic hair, eye brows and eye lashes were completely burnt. There was red line of demarcation present over the soles of the feet. Blackening was present over the protruded part of the tongue. The cause of death as opined by the post mortem doctor was neurogenic shock and asphyxia consequent to close space burnt by dry flames. The extent of burn injuries was 100%. As per the doctor, the death could not have been accidental because the distribution of burn injuries was upside downwards.

20. E. Raja Babu, (PW-10) was the SDM, Punjabi Bagh, who deposed before the court that on the date of incident he received a telephonic message that one lady was burnt. He reached the spot at Nihal Vihar and found one lady lying dead with burn injuries. He had recorded the statement of Lalji, father of deceased and directed registration of case. As per his deposition he had reached the spot at 1.15 pm and at that time father and 1-2 more relatives of deceased were present there.

21. ASI A.K. Singh (PW-13) had deposed that on the day of incident he reached the sport, prepared site plan Ex.PW-13/A and recorded the statement of Lalji Gupta, Suresh Raj Kumar. Thereafter, he had gone to the first floor of the house and it was revealed that the injured was removed to some mortuary. He taken into possession one chappal, one plastic cane. He found the accused – Manju Devi and

after interrogation, she was arrested. Accused Ram Bharose was arrested on 04.03.2000, however accused - Arun surrendered in court on 15.03.2000. After completion of the investigation, he had filed the challan in court.

22. From the foregoing narration of extracts of the depositions of the relevant witnesses, this court observes that on the date of incident i.e. 02.03.2000 all the appellants were present in their house; father of the deceased – Lalji Gupta alongwith Basanti, Siri Ram and Raj Kumar visited the matrimonial home of the victim to take her back to her parental home but all the four appellants did not send Pratima with them. This court further observes from the deposition of father of the deceased – Lalji Gupta that when he requested the appellant - Ram Bharose to send Pratima with him, he asked him to seek permission from appellant – Manju, who in turn told him to contact appellant – Arun. When he repeated his request and insisted that Pratima should be sent with him, all the four appellants including Anil started quarreling with them. On this, it was the appellant – Arun Kumar who threatened by saying – '*jayada karoge to kuchh kar dalenge*'. This court further observes that Suresh (PW-4) had deposed that the appellant – Arun Kumar caught hold of the arm of Partima @ Pinki and challenged them to *take her if they had the courage*. This court further observes from the deposition of Siri Ram (PW-5) where he stated that *all the four accused persons demanded Rs.50,000/- and flatly refused to send Pinki*, however without making any specific allegation against any of the appellants. There is another deposition of

Raj Kumar (PW-9), who in his statement stated that the accused – Arun pulled Pratima by her hand and brought her outside the house. Thereafter, accused Arun threatened that if they would take any step then Pratima would meet with dire consequences. This court further observes from the deposition of Smt. Basanti Kumari (PW-2) that it was the appellant – Arun who caught Pratima by her upper arm and offered her relatives to take her on which the relatives of Pratima asked him to send Pratima in a respectful way and not in that manner.

23. After a careful scrutiny of the material placed on record, deposition of the relevant witnesses and analysis of the facts of the present case, this court finds that on the date of incident, when father of the victim alongwith other relatives went to the matrimonial home of the victim, there was a quarrel with regard to the fact that father of the victim wanted to take his daughter Pratima @ Pinki back to his home and the appellants were not willing to send her with her father. Though there is a general statement of Basanti Kumari (PW-2) that the parents of accused Arun asked for Rs.15/20,000/- but even then they were not ready to send Pratima. There is also a general statement of PW-5 – Siri Ram that all the four accused persons demanded Rs.50,000/- and flatly refused to send Pinki. However, this court does not find any such specific averment in the statement of Lalji Gupta (PW-3) regarding any demand of dowry on the date of incident except to the effect that the appellant – Arun Kumar threatened 'jayada karoge to kuch kar dalenge'.

24. Thus, from the testimony of PW3, PW4 and PW5, it has duly

been established that all the appellants had harassed the deceased for or on account of demand of dowry. Therefore, the conviction of the appellants under Section 498A/34 IPC deserves to be upheld.

25. The appellants were also charged under Section 304-B read with 34 IPC for causing dowry death of the deceased Renu.

26. In the case of *Devi Lal vs. State of Rajasthan* AIR 2008 SC 332, Hon'ble Supreme 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 required is to find out whether the evidences brought on record satisfy the ingredients thereof.

27. 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.*

28. As far as death of the deceased Pratima @ Pinki is concerned, it is not in dispute that she died due to burning which shows that the death of the deceased was not under normal circumstances and was due to the bodily injuries which fulfill the first ingredient for the commission of offence under Section 304-B IPC.

29. 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 17.06.1998 and her death took place on 02.03.2000 i.e. within just two years of marriage.

30. 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 the same was done soon before her death.

31. Smt.Basanti (PW2) in her deposition specifically deposed that on the day of incident i.e. on 02.03.2000, she along with PW3, PW4 and PW5 went to the house of the accused persons where a quarrel between them and accused persons had taken place on account of taking the deceased with them. She specifically deposed that parents

of the husband of the deceased had demanded Rs.15-20,000/- from them and at that time all the accused persons were present.

32. From the testimony of PW2, it has duly been established that on the day of death of the deceased, there was demand of dowry in the form of cash by the accused persons which duly covers the case of prosecution with regard to harassment and cruelty meted out to the deceased for or in connection with demand of dowry soon before her death.

33. Testimony of PW2 on the above aspect has duly been corroborated by PW5-Siri Ram. He had deposed that on the day of incident, he along with PW2-Smt.Basanti, PW3-Lalji and PW4-Suresh and PW9-Raj Kumar had gone to the house of the accused persons on 02.03.2000 to take the deceased with them. He has specifically deposed that all the accused persons were present there and quarreled with them. He had further deposed that all the accused persons demanded Rs.50,000/- from them and flatly refused to send deceased with them.

34. Thus, from the testimony of PW5, the incident of harassment and cruelty meted out to the deceased on account of demand of dowry soon before her death has also been duly established.

35. From the testimony of PW3 and PW4 also it has duly been corroborated that on the day of incident when they along with PW2 and PW5 went to take deceased with them, all the accused persons were present in their house, they had picked up a quarrel with them, accused persons refused to send deceased with the complainant party and gave abuses to them.

36. From the totality of evidence discussed above, it has duly been established that deceased was subjected to cruelty or harassment by all the appellants on account of demand of dowry and there is sufficient evidence to hold them guilty for the commission of dowry death of the deceased. Thus, the conviction of the appellants under Section 304-B/34 IPC deserves to be upheld.

37. In view of the above discussion, this Court does not find any illegality or infirmity in the impugned 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. A copy of this order be sent to the Trial Court for information and necessary steps.

40. With aforesaid directions, the present appeal is disposed of.

(P.S.TEJI)
JUDGE

April 11, 2017
pkb/dd