

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on : July 18th, 2017

+ **Crl. A. No. 143/2003**

S.M. SACHDEV

..... Appellant

Through: Mr.R.N. Mittal, Senior Advocate with
Mr.Rupendra Pratap singh, Ms.Arushi
Tanqvi, Adv.

versus

STATE (GOVT NCT OF DELHI)

..... Respondent

Through: Mr. Panna Lal Sharma, Additional
Public Prosecutor for the State with
Sub Inspector Raj Kumar, Police
Station K.M. Pur, Delhi.

AND

+ **Crl.Rev.P. 534/2003**

MEENA KATHURIA

..... Petitioner

Through: Ms.Vaishali Soni, Advocate.

versus

STATE OF NCT DELHI & ANR

..... Respondent

Through: Mr. Panna Lal Sharma, Additional
Public Prosecutor for the State with
Sub Inspector Raj Kumar, Police
Station K.M. Pur, Delhi.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. The present appeal has been filed by the appellant S.M. Sachdev being aggrieved by the judgment of conviction dated 24.02.2003 passed by the learned Additional Sessions Judge, Delhi convicting the appellant for the offence punishable under Section 498A of Indian Penal Code (hereinafter referred to as I.P.C.) and order on sentence dated 28.02.2003, whereby the appellant has been sentenced to undergo rigorous imprisonment for a period of two years and fine of Rs.10,000/- and in default of payment of fine he was further sentenced to undergo rigorous imprisonment for three months.

2. On the other hand, petitioner Meena Kathuria, filed a revision petition under Section 397 Cr.P.C. for setting aside the impugned judgment of acquitting the accused for offence committed under Section 304B IPC. Since both appeal and revision petition have been preferred against the same judgment, therefore, both the cases are decided together.

3. The facts in brief are that Sh.A.D Malik had made a statement to the police that his daughter Ratna was married to accused Shyam Sundar on 3.12.1985. The accused used to live in Delhi and Ratna post marriage shifted to Delhi and started living with the accused. Post marriage, the accused and his mother started harassing, maltreating Ratna with cruelty for want of dowry. The accused turned out Ratna outside her matrimonial home on a number of occasions and the entire stay of Ratna with the accused was faced with torture and cruelty on

account of demand of dowry. The complainant had given money several times to his daughter to meet the demands of accused persons. On 23.03.1989, he received a telephone call that his daughter Ratna had got burnt and was admitted in hospital and thereafter she succumbed to her injuries.

4. On the basis of statement made by the complainant, FIR of the present case was registered and the accused was arrested. After completion of investigation, charge sheet was filed before the trial court.

5. The appellant was charged with the offence punishable under Sections 498A and 304B of IPC to which he pleaded not guilty and claimed trial.

6. To bring home the guilt of the appellant, the prosecution examined PW1 Sh.Ved Prakash, PW2 Ascharaj Lal, PW3 Dr.B.Swain, PW4 Kaushal Sachdeva, PW5 Y.D. Malik, PW6 Mrs.Meena Kathuria, PW7 A.D. Malik, PW8 J.L. Kalra, PW10 Dr.Sebastian, PW13 Janak Raj, PW15 Dr. Iqbal Singh Cheema, the then SDM apart from other witnesses.

7. After conclusion of prosecution evidence, statement of the accused persons was recorded under Section 313 Cr.P.C.

8. After considering the facts, evidence led on behalf of both the sides and the material on record, the learned Additional Sessions Judge held the appellant guilty for an offence punishable under Section 498A of IPC, however he has been acquitted for the offence

punishable under Section 304B IPC. Hence the present appeal has been preferred against the impugned judgment and order on sentence.

9. Learned counsel for the appellant contended that the letters allegedly written by the deceased did not implicate the appellant as there is nothing in it against the appellant. In her dying declaration, the deceased did not give any reason for burning herself. The appellant himself tried to put off the fire with blanket and in the process he also sustained burn injuries. There was no evidence on record from which it can be said that the appellant had ever demanded any dowry from the deceased or from her family members or that the deceased was ever meted with cruelty by the appellant for or in connection with demand of dowry. It was further contended that the trial court has not appreciated the evidence brought on record in correct perspective.

10. In support of the above contentions, learned counsel has relied upon the judgment in the case of ***State of Uttar Pradesh v. Abhai Raj Singh 2004 AIR SC 3235, Sukhlal & Ors. V. State of U.P. 2014 Law Suit (All) 1665, Kunwar Bahadur Singh v. Sheo Baran Singh AIR 2003 SC 2066, Savitri Dvi v. Ramesh Chand & Ors. 2003 Cri.L.J. 2759, Hans Raj Sharma v. State of Govt. of NCT 2010 (175) DLT 446 and Ramesh Chander v. State of Delhi (Crl.A. 526/2002)*** to press the contention that harassment means to torment a person subjecting him or her through constant interference or intimidation. If such tormentation is done with a view to coerce any person and the wife to do any unlawful act and to meet the unlawful demand of property or

valuable security, it amounts to harassment as contemplated by Section 498A IPC.

11. To appreciate the arguments advanced, it would be appropriate to go through the evidence adduced before the trial court.

12. A.D. Malik (PW7) is the father of the deceased. In his testimony, he had stated that before the marriage of his deceased daughter Ratna, both the accused complained about the dowry to be given in the marriage. They had stated that there was no TV, fridge and other articles and demanded more gold and diamond jewellery. This witness had taken loan and arranged for the demands made by the accused. He spent about 1.5 lacs in the marriage. After marriage, the deceased was harassed all the time. She was given beatings and threatened to bring Maruti Car and Rs.50,000/- else she would be killed. He met the accused and expressed his inability to give car and cash, however he gave Rs.5,000/- to accused. Ratna was turned out of her matrimonial home in March, 1986. Thereafter, she was taken back by the accused. Ratna was again turned out of her matrimonial home in April, 1987 and thereafter she took admission in B.Ed. Court in Agra. In July, 1988 accused brought Ratna to Delhi. Thereafter, again accused started beating Ratna and taunted her for less dowry and started asking for costly items. In September-October 1988, this witness purchased an almirah, cooler, stereo, etc. for Rs.8,000/- and gave the same to accused.

13. From the testimony of PW7 i.e. father of the deceased, it is apparent that there was demand of dowry by the accused from the

deceased and that the deceased was harassed and tortured on account of demand of dowry. It has come in his testimony that the accused used to beat, taunt and harass the deceased for bringing less dowry and had demanded car and cash of Rs.50,000/-. It was stated by the witness that he had given a sum of Rs.5,000/- and Rs.10,000/- a few times to the accused but his behavior towards the deceased did not change and she had faced the constant trauma of harassment and cruelty.

14. PW6 Mrs.Meena Kathuria, sister of the deceased has corroborated the testimony of her father PW7. PW6 had stated that after marriage, husband of Ratna i.e. the appellant-herein and his mother used to harass Ratna. When Ratna visited the house of PW6, she told about the harassment meted out to her. She was harassed for money and articles from her maternal home. She was asked to bring money and different articles. PW6 further stated that Ratna had visited her house about 8/10 days prior to the incident. Accused wanted a VCR and she conveyed his demand to her father. Ratna used to tell PW6 that the accused used to beat her in a cruel manner and sometimes used to break her hand and sometimes beating marks used to be there on her back.

15. From the testimony of PW6 also, it has been duly established that the accused used to demand money and other articles from the deceased and used to harass her to meet his demands of dowry articles. She had specifically stated that the deceased told her that

accused used to harass and beat her mercilessly. There was specific demand of VCR by accused from the deceased.

16. The testimony of the father (PW7) and sister (PW6) of the deceased clearly proves the case of the prosecution that the appellant used to harass the deceased for or in connection of demand of dowry. Various instances have been given by these witnesses from which it has been proved that accused used to demand money, articles, VCR and car from the deceased and used to harass and beat her in connection with the said demands.

17. In view of the totality of evidence discussed above, this Court is of the view that the prosecution had successfully established its case against the appellant that he used to harass and meted the deceased with cruelty for or in connection with demand of dowry and his conviction under Section 498A IPC deserves to be upheld.

18. So far the quantum of punishment is concerned, it is apparent from the record that the marriage of the appellant with the deceased had taken place on 03.12.1985. The deceased died on 22.03.1989. The FIR of the instant case was registered on 25.03.1989. The judgment of conviction was passed on 24.02.2003 and the order on sentence was passed on 28.02.2003. Thereafter, the instant appeal was filed and the sentence awarded to the appellant was suspended.

19. It is apparent from the record that the appellant remained behind the bars for about seven months. It is further apparent from the record that since the day of registration of FIR, the appellant has faced the

protracted trial of about 28 years. So, it would be in the interest of justice to release the appellant on the period already undergone by him.

20. In view of the above discussion, the judgment of conviction passed by the trial court is accordingly upheld. However, the sentence awarded to the appellant is modified to the extent of period already undergone by him.

21. Now coming to the revision petition. It has been alleged by the petitioner that the offence of committing dowry death of the deceased was committed within the walls of the house and it is impossible to bring any direct evidence. There is sufficient evidence on record to establish that the deceased was continuously harassed for want of dowry, not only physically but mentally also. The death of the deceased had taken within seven years of her marriage and there is every reason to raise presumption under Section 113B of the Evidence Act against the husband of the deceased. There was sufficient evidence to convict the accused-husband under Section 304B of the IPC. The petitioner has prayed for setting aside the judgment of acquittal of the accused under Section 304B IPC.

22. I have gone through the record produced on file in detail. The evidence adduced by the prosecution does not show anything on record that the deceased was subjected to harassment or cruelty for or in connection with demand of dowry by the accused-husband soon before her death. Though there are allegations of harassment and cruelty meted out to the deceased for demand of dowry by the

accused-husband, but one of the essential ingredients of causing dowry death i.e. such harassment or cruelty soon before death of the deceased is missing. Therefore, in the absence of clear and convincing evidence of causing dowry death, this Court is not inclined to interfere in the judgment of conviction passed by the trial court.

23. As discussed above, this Court is of the view that the petitioner in the revision petition has failed to show any illegality, infirmity or impropriety in the judgment of conviction dated 24.02.2003 convicting the accused-husband under Section 498A IPC and acquitting him for the offence under Section 304B IPC. There is no merit in the present revision petition and same deserves to be dismissed.

24. As discussed above, both appeal as well as revision petition are disposed of.

JULY 18, 2017
dd

(P.S.TEJI)
JUDGE