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

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Decided on: 1st June, 2017

+ CRL.A. 433/2013

ASHOK

..... Appellant

Represented by: Mr. Habibur Rehman, Adv.
(DHCLSC) and Mr. Bharat
Chugh, Adv. (Amicus Curiae).

versus

STATE (GNCT OF DELHI)

..... Respondent

Represented by: Mr. Ravi Nayak, APP for State
with SI Jasmer Singh, PS
Jahangirpuri.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Ashok challenges the impugned judgment dated 28th April, 2012 convicting him for offences punishable under Sections 498A/304B IPC and the order on sentence dated 9th August, 2012 directing him to undergo rigorous imprisonment for a period of two years and to pay a fine of ₹1,000/- for offence punishable under Section 498A IPC and rigorous imprisonment for a period of seven years for offence punishable under Section 304B IPC.
2. Learned counsel for the appellant contends that the only eye-witness on the spot was Sunita. She categorically stated that she was residing in the said house and when the appellant came home, the room was closed from inside and the deceased committed suicide by hanging herself from the fan.

She did not depose about any quarrel or any untoward incident that took place between the deceased and the appellant soon before the death of the deceased. The allegations of the mother and brother of the deceased that there was demand of dowry are vague and general in nature. No previous complaint in respect of demand of dowry or harassment was lodged. Further it is self contradictory that on one hand allegation of demand of dowry was made by mother of the deceased and on the other hand the deceased was not being permitted to go to her parental home. Though the mother stated that she lodged a complaint to the police however the same has not been proved. Mother of the deceased made material improvements in her testimony. She deposed that she took a loan of ₹2000/-. The witness has been duly confronted with her earlier statement wherein this fact was not recorded. The essential ingredients of offence punishable under Section 304B IPC i.e. harassment in relation of demand of dowry soon before death having not been proved, the appellant is entitled to be acquitted.

3. Learned amicus curiae Mr. Bharat Chugh, in addition submits that the allegation is that ₹2000/- were taken from the parents of the deceased for her treatment. The same does not fall in the definition of 'dowry' as the same is not in relation to marriage. The allegation that the deceased was given burn injuries by cigarette butts is also exaggerated as the same is not supported by the postmortem report. Further the allegation that the deceased was not given food is falsified by the postmortem report which notes that the deceased was "strong and well built". Deceased has suicidal tendency and had earlier also attempted to commit suicide as is admitted by prosecution witnesses. The deceased was a hypersensitive person and could not handle the normal wear and tear of family life. Reliance is placed on the decision of Supreme Court

reported as (1994) 1 SCC 73 State of West Bengal Vs. Orilal Jaiswal & Anr.

4. Learned APP for the State on the other hand contends that the defence of the appellant in his statement under Section 313 Cr.P.C. was that the deceased and the appellant had performed love marriage and the mother of the deceased was not happy thus relations were strained. However this defence has neither been proved during cross-examination of the prosecution witnesses nor by leading defence evidence. The brother of the deceased has specifically stated that he had gone to meet the deceased two days prior to Rakshabandan and at that time, demand for ₹5000/-, colour TV and clothes for his family members was made by the appellant. The fact that ₹2000/- were taken for the treatment of deceased does not absolve the appellant from the allegation of demand of dowry.

5. Process of law was set into motion on 7th August 2009 when information was received on wireless around 2:03 P.M. about the commission of suicide by hanging of a woman at 76/2, Bhalaswa, Harijan Colony which was recorded by W/HC Kaushal vide DD No. 24A (Ex.PW-3/A). The aforesaid DD entry was assigned to ASI Bhagwat Singh who along with Ct. Khem Chand went to the spot and found that the room was bolted from inside. From the window, they saw that a lady whose name was revealed as Pinki w/o Ashok was hanging from the roof of the room with a saree type cloth. In the meantime, ACP Raj Kumar also reached the spot. Photographs were taken from outside (Ex. PW-14/A1 to Ex. PW-14/A4). Crime team came to the spot and prepared the report Ex. PW-16/A. The door of the room was broken. Dead body was brought down and sent to the mortuary. ACP Raj Kumar prepared the site plan (Ex.PW-19/A) at the instance of ASI Bhagwat Singh. Ashok was arrested vide arrest memo

Ex.PW-13/C and his personal search was conducted vide memo Ex.PW-13/D. ACP Raj Kumar made search for co-accused namely Sandeep, Ramesh, Smt. Sundri and Niranjana but they could not be traced. Subsequently, SDM, Model Town was informed. Mr. Praveen, Executive Magistrate reached the spot and found that the body was not lying there. From there he went to mortuary, BJRM Hospital but the body was not found there. Next day, he went to BJRM hospital and inspected the body of deceased Pinki. He recorded the statements of Balbir and Amar vide Ex. PW-6/B and Ex. PW-12/B respectively. He also recorded the statements of other witnesses namely Sunita, Ashok Kumar and Dhani Ram vide Ex. PW-12/C, Ex. PW-12/D and Ex. PW-12/E respectively. He filed an application (Ex. PW-12/F) and request form (Ex. PW-12/G) for conducting the post mortem of deceased. Thereafter, he recorded statement of Laxmi and Balbir.

6. FIR No. 437/2009 (Ex. PW-2/A) was registered under Section 498A/304B at PS Jahangirpuri on the statement of Laxmi (Ex. PW1/A) who stated that she was the wife of Balbir Singh and resident of Ramgarh. Her daughter got married two years ago and since then the accused used to keep her daughter hungry and did not give her any money for medical treatment. Her daughter had boils on her chest, but they didn't get her treated and she had to pay for that. They used to harass her daughter for not having a son and used to make demand for money. They didn't give food to her granddaughter also. When her daughter went for work, they did not look after her granddaughter. They had sent away Ramesh's wife also after beating her. Her daughter had cigarette burns on her hands and they had complained to the police also. The boy's family had beaten them up also four times that's why they shifted to Ramgarh. Two days prior to the festival of

Rakshbandhan, they told her son Pintu to get ₹5000/-. She sought legal action against Ashok, his mother and brother.

7. PW-1 Smt. Lakshmi deposed in conformity with her earlier statement made before the Executive Magistrate. She further stated that the deceased Pinki was given beatings by Ashok, her mother-in-law Sundri, her father-in-law Niranjan and brothers-in-law Sandeep and Ramesh. Whenever she and her husband used to go to their house to persuade them, they were also given beatings by the accused persons. When the deceased had boils on her chest, she was not provided treatment for the same. Ashok had asked her to bring money for treatment. She, therefore, took ₹2,000/- on interest and gave it to Ashok for the treatment of the deceased. Ashok used to quarrel with the deceased Pinki after consuming liquor. During her cross-examination, she stated that she had not made any written police complaint prior to the death of her daughter. She admitted that the deceased had fled with one Balwant. She voluntarily stated that the deceased had fled away after her marriage with Ashok as she was forced to take the step due to excesses by Ashok. She denied the suggestion that Ashok and his family members had not made any dowry demand to her or her daughter at any point of time. She also denied the suggestion that the deceased was in the habit of attempting suicide.

8. PW-4 Pintoo, brother of deceased, stated that about two days before Rakshabandhan, he had gone to the house of the deceased. Ashok questioned him as to why he had come. When he told him that he had come to meet his sister, Ashok asked him to bring ₹5,000/-, colour TV and clothes for his family members. When the deceased objected to this, he slapped her. During his cross-examination, he admitted that the deceased had jumped in the drain

before marriage. He also admitted that deceased had eloped with Balwant.

9. PW-6 Balbir, father of deceased, deposed that he gave dowry in the marriage of his deceased daughter as per his capacity. Behavior of Ashok with the deceased for the initial 2-3 months was good but thereafter he started beating her and asked her to bring money from him. Sometimes, he used to pay ₹100/-, ₹200/- and sometimes he used to get ration for her house. Further, since the deceased had given birth to a daughter instead of a son, Ashok was not happy and used to taunt her for the same. He would not even provide milk and food to the deceased and his granddaughter. He ill treated her, and when she fell sick, he refused to get the deceased treated. Further, he used to burn the deceased with cigarettes and beedis.

10. PW-5 Gajender Kumar, who was doing finance work, deposed that Balbir Singh had taken a friendly loan of ₹2,000/- from him in the month of July 2009 which was later returned to him. He did not know for what purpose Balbir Singh had borrowed the money. During his cross-examination, he denied the suggestion that he had given the money to Balbir Singh on interest for making payment to in-laws of Pinki.

11. PW-7 Sunita deposed that on 7th August, 2009 she had gone to 76/2 Harijan Colony, Village Bhalaswa on the occasion of Rakshabandan. Around 1:30 P.M., on hearing the noise of Ashok, she came out of the room. Ashok was saying that his wife was not opening the door from inside. After seeing from the jangla, he told that his wife had committed suicide by hanging herself with a chunni.

12. PW-8 Kallu deposed that Ashok was living in one room with the deceased in his house as tenant since last four months prior to the occurrence. Occasionally there used to be quarrel between Ashok and the

deceased.

13. PW-20 Dr. V.K.Jha, Medical Officer BJRM Hospital deposed that on 9th August 2009, he conducted the postmortem on the dead body of the deceased and exhibited the post mortem report as Ex. PW-20/A. As per the report, following external injuries were observed on the dead body of the deceased:

"Ligature material saree was present around the neck. An obliquely placed pressure abrasion mark present on front and sides of neck going upwards and backwards towards posterior hair line. The length of the ligature mark is 28 cm long and breadth 2 cm placed 7 cm below chin on front and 8 cm, 5 cm below right and left ear lobule. The skin over the ligature mark is hard and parchmented.

On dissection of side tissue underneath the ligature mark is pale and glistening."

14. On internal examination, the head, brain and other visceral organs were congested. Post mortem findings were consistent with ante mortem ligature hanging. Time since death was approximately two days. As per the subsequent opinion for cause of death Ex.PW20/C, it was opined to be due to asphyxia as a result of ligature pressure over neck structures produced by ante mortem ligature hanging.

15. As per the FSL report (Ex. PX), on chemical and TLC examination, metallic poisons, ethyl and methyl alcohol, cyanide, phosphide, alkaloids, barbiturates, tranquilizers and pesticides could not be detected in exhibits '1a' (stomach and piece of small intestine with contents, kept in a sealed jar), '1b' (pieces of liver, spleen and kidney, kept in a sealed jar) and '1c' (blood sample volume approx 5 ml. kept in a sealed bottle) [viscera of deceased].

16. Essential ingredients required to be proved as foundational facts by the prosecution for an offence punishable under Section 304B IPC are (i) the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances; (ii) such death must have occurred within seven years of her marriage; (iii) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or any relatives of her husband; (iv) such cruelty or harassment must be for, or in connection with, demand for dowry.

17. In the present case, the appellant and deceased were married around two years prior to the incident thus less than 7 years of the marriage. The cause of death of the deceased was asphyxia as a result of ligature pressure over neck structures produced by antemortem ligature hanging. Thus, the two essential ingredients that death was unnatural and was within seven years of marriage as required under Section 304B IPC are fulfilled.

18. In respect of the third and fourth ingredient that whether the deceased was subjected to cruelty soon before the death and the same was in connection with demand of dowry are concerned, brother of the deceased clearly deposed that two days prior to Rakshabandhan when he went to visit his sister, the appellant demanded ₹5000/-, color TV and clothes for his family members. Further mother of the deceased deposed that, the deceased was not given food or money to buy medicine by the appellant, his parents and brothers; deceased was given beating by them and they used to demand dowry from her. She used to give money even for basic necessities such as food and to purchase milk and other household articles. The mother of the deceased was confronted with her earlier statement Ex.PW-1/A with regard to her deposition that ₹2,000/- was taken by her on loan and given to the

appellant and her daughter for her treatment. Though it is noted in the evidence that these facts have not been stated in the previous statement however perusal of Ex.PW1/A which is statement of mother of the deceased recorded by the SDM clearly shows that the mother of the deceased stated that she was a rag picker and used to pick papers, she had taken ₹2000/- on loan with interest and given to her daughter as her in-laws used to keep her in a difficult situation. She also stated that she had told the fact to the police one year before the incident however she did not lodge any FIR and that the appellant used to beat her almost daily.

19. Sunita is only a neighbour and merely because she did not depose that minutes or hours before the deceased hanging herself there was a quarrel between the appellant and the deceased, the same does not prove that there was no harassment for demand of dowry soon before death. Section 304B IPC does not contemplate that the harassment should be within minutes or hours or few days of the time since death but a reasonable period prior to the death when deceased is subjected to cruelty is sufficient to show the live link which in the present case is proved as two days prior to the death, specific demand from the brother of deceased was made. In the decision reported as MANU/DE/3997/2010 Riyazuddin Vs. State Govt. of NCT of Delhi this Court following the decision in Kans Raj Vs. State of Punjab and Others held-

“6. I find no merit in the contention of the learned counsel for the Appellant that the prosecution has not been able to prove that soon before death the deceased was subjected to cruelty in relation to demand of dowry. “Soon before” is a relative term to be considered under specific circumstances of each case. The prosecution is required to prove that there is a proximate and live link between the effect of cruelty based on dowry demand and the

consequential death. In a case of persistent demand and repeated harassment on that count, the proximate and live link can be said to be proved by the prosecution. In every case the same is not required to be proved by proving a solitary incident immediately prior to the incident. In Kans Raj vs. State of Punjab and others (2000) 5 SCC 207 it was held:

“15. It is further contended on behalf of the respondents that the statements of the deceased referred to the instances could not be termed to be cruelty or harassment by the husband soon before her death. "Soon before" is a relative term which is required to be considered under specific circumstances of each case and no straightjacket formula can be laid down by fixing any time-limit. This expression is pregnant with the idea of proximity test. The term "soon before" is not synonymous with the term "immediately before" and is opposite of the expression "soon after" as used and understood in Section 114, Illustration (a) of the Evidence Act. These words would imply that the interval should not be too long before the time of making the statement and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be "soon before death" if any other intervening circumstance showing the non-existence of such treatment is not brought on record, before the alleged such alleged treatment and the date of death. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough.”

20. Merely because the postmortem report noted that the deceased was strong and well built would not belie the deposition of the mother of the deceased that she was not given food because the same was occasional and not that the deceased was never given food. Further non-mentioning of burn injuries in the postmortem report also does not show that the deceased was not meted out such a cruelty.

21. As regards the contention that the deceased was a hypersensitive woman, it may be noted that the facts that the deceased had eloped with one Balwant and that prior to her marriage she had jumped in a drain do not carry any weight. Unsatisfied in the matrimonial home, the deceased took the step of leaving the matrimonial home and joining the company of another person. This fact further fortifies that the deceased was not happy in the matrimonial home. Similarly the incident wherein the deceased fell in the drain has not been proved as to whether the same was accidental or not. Moreover, no evidence has been led by the defence to show that the deceased was suffering from any depression as contended or that her behaviour was not normal.

22. The ingredients of Section 304B IPC having been fulfilled from the foundational facts proved by the prosecution, this Court is mandated to draw the presumption raised under Section 113B of the Indian Evidence Act, which the appellant has failed to rebut. In the decision of the Supreme Court reported as (2011) 11 SCC 359 Bansi Lal Vs. State of Haryana it was held-

“18. In such a fact situation, the provisions of Section 113-B of the Evidence Act, 1872 providing for presumption that the accused is responsible for dowry death, have to be pressed in service. The said provisions read as under:

“113-B. 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 had 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.”

(emphasis supplied)

“19. It may be mentioned herein that the legislature in its wisdom has used the word “shall” thus, making a mandatory application on the part of the court to presume that death had been committed by the person who had subjected her to cruelty or harassment in connection with any demand of dowry. It is unlike the provisions of Section 113-A of the Evidence Act where a discretion has been conferred upon the court wherein it had been provided that court may presume abetment of suicide by a married woman. Therefore, in view of the above, onus lies on the accused to rebut the presumption and in case of Section 113-B relatable to Section 304-B IPC, the onus to prove shifts exclusively and heavily on the accused. The only requirements are that death of a woman has been caused by means other than any natural circumstances; that death has been caused or occurred within 7 years of her marriage; and such woman had been subjected to cruelty or harassment by her husband or any relative of her husband in connection with any demand of dowry.

20. Therefore, in case the essential ingredients of such death have been established by the prosecution, it is the duty of the court to raise a presumption that the accused has caused the dowry death. It may also be pertinent to mention herein that the expression “soon before her death” has not been defined in either of the statutes. Therefore, in each case, the Court has to analyse the facts and circumstances leading to the death of the victim and decide if there is any proximate connection between the demand of dowry and act of cruelty or harassment and the death. (Vide T. Aruntperunjothi v. State [(2006) 9 SCC 467 : (2006) 2 SCC (Cri) 528 : AIR 2006 SC 2475] ; Devi Lal v. State of Rajasthan [(2007) 14 SCC 176 : (2009) 1 SCC (Cri) 785 : AIR 2008 SC 332] ; State of Rajasthan v. Jaggu Ram [(2008) 12 SCC 51 : (2009) 1 SCC

(Cri) 317 : AIR 2008 SC 982] , SCC p. 56, para 13; Anand Kumar v. State of M.P. [(2009) 3 SCC 799 : (2009) 2 SCC (Cri) 28 : AIR 2009 SC 2155] and Undavalli Narayana Rao v. State of A.P. [(2009) 14 SCC 588 : (2010) 1 SCC (Cri) 1466 : AIR 2010 SC 3708])”

23. Considering the evidence on record proved by the prosecution and the same having not been rebutted by the defence, this Court finds no illegality in the impugned judgment of conviction and order on sentence.

24. In view of the above discussion, this Court finds no illegality in the impugned judgment of conviction and order on sentence. Appeal is dismissed. Personal bond and surety bond of the appellant are discharged. The appellant whose sentence was suspended during pendency of the appeal vide order dated 2nd April, 2013 shall surrender to custody to undergo the remaining sentence.

25. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

26. Trial Court Record be returned.

(MUKTA GUPTA)
JUDGE

JUNE 01, 2017
‘v mittal’