

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

RESERVED ON : 20th FEBRUARY, 2017
DECIDED ON : 13th APRIL, 2017

+ **CRL.A. 1555/2013**
VIKAS MEHTA Appellant
Through : Mr.Dinesh Malik, Advocate with
Mr.Manish Malik & Mr.Akash Saini,
Advocates.

VERSUS

STATE GOVT OF NCT DELHI Respondent
Through : Ms.Meenakshi Dahiya, APP.

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

S.P.GARG, J.

1. Challenge in this appeal is a judgment dated 05.10.2013 of learned Addl. Sessions Judge in Sessions Case No.82/2013 arising out of FIR No.395/2010 PS Shalimar Bagh whereby the appellant – Vikas Mehta was convicted for commission of offences punishable under Sections 498A/306 IPC. By an order dated 26.10.2013, he was sentenced to undergo RI for ten years with fine ₹10,000/- under Section 306 IPC and RI for three years with fine ₹5,000/- under Section 498A IPC. Both the sentences were to operate concurrently.

2. The facts, briefly stated, are that on 15.11.2010 at around 01.00 p.m., the victim Neha married to the appellant Vikas Mehta as per Hindu rites and customs on 02.11.2009 committed suicide by hanging herself from

the ceiling fan. The intimation was conveyed to the police by the appellant himself and DD No.20A (Ex.PW-5/A) came into existence at around 03.15 p.m. The investigation was assigned to SI Rajan Pal who along with Const.Durga Dass went to the spot i.e. 2nd floor of House No.197, Gali No.2, Shalimar Bagh, Delhi. Crime team visited the spot at around 04.30 – 05.00 p.m. Victim's parents arrived at the spot. The body was sent to mortuary BJRN Hospital for post-mortem examination.

3. On 16.11.2010, the Executive Magistrate recorded statements of the victim's mother – PW-9 (Neeru) and that of her father – PW-14 (Baldev Raj Bhardwaj). FIR under Sections 498A/304B/34 IPC was registered. During investigation, statements of the witnesses conversant with the facts were recorded. The appellant, his parents and sister were arrested. Upon completion of investigation, a charge-sheet was submitted against all of them in the court for the commission of the aforesaid offences. To prove its case, the prosecution examined twenty witnesses. In 313 Cr.P.C. statements, the accused persons denied their involvement in the crime and pleaded false implication. After considering the rival contentions of the parties and on appreciation of the evidence, the Trial Court convicted the appellant for commission of offences punishable under Sections 498A/306 IPC. It is pertinent to note that other accused persons – Jeet Lal Mehta and Asha Rani (victim's in-laws) and Sweety @ Suman Mehta (victim's sister-in-law) were acquitted of the charges. The appellant was also acquitted of the charge under Section 304B IPC. State did not challenge their acquittal. Being aggrieved and dissatisfied for conviction under Section 498A/306 IPC, the appellant has preferred the instant appeal.

4. I have heard the learned counsel for the parties and have examined the file. Appellant's counsel urged that the Trial Court did not appreciate the evidence in its true and proper perspective. No independent public witness was associated at any stage of investigation though the victim had access to her neighbours. The appellant himself had gone to the Police Station to convey the occurrence; her parents were duly informed. The injuries found on the victim's body were not sufficient to cause her death. Possibility of suffering bruise on her body during struggle at the time of hanging herself cannot be ruled out. There was no harassment whatsoever to the deceased on account of any demand of dowry. Learned APP urged that there are no valid reasons to disbelieve the statements of the victim's parents who had no extraneous consideration to implicate the appellant.

5. Admitted position is that victim Neha was married to the appellant on 02.11.2009. She committed suicide on 15.11.2010 at her matrimonial home i.e. 2nd floor of House No.197, Gali No.2, Shalimar Bagh, Delhi. It is also not disputed that initially the victim and the appellant were residing at House No.RZF 38, New Roshanpura, Najafgarh. Subsequently, they shifted to the house bearing No. 197, Gali No.2, Shalimar Bagh, Delhi, owned by PW-1 (Jatin Chaudhary). In his testimony before the Court, Jatin Chaudhary disclosed that the premises in question were let out to the appellant on a monthly rent of ₹2,700/- on 10.08.2010. Apparently, the victim had died otherwise than under normal circumstances within seven years from the date of her marriage at the matrimonial home.

6. The appellant had informed the Investigating Agency (Ex.PW-19/B) that on 15.11.2010 at around 09.30 a.m., he had gone to his work place. At about 01.30 -02.00 p.m. on return along with his father Jeet Lal

Mehta, he found the door locked from inside. No evidence has, however, emerged on record to infer as to when and at what time, the appellant had left the home on the unfortunate day of occurrence. It was also not explained in 313 Cr.P.C. statement as to where the appellant had gone after leaving the house. He did not examine any witness from his place of work to ascertain if he had reported for duty that day and what was the duration of his stay there. He did not elaborate as to what were the timings at his work place and what prompted him to return to the home at around 01.30-02.00 p.m. Jeet Lal Mehta in 313 Cr.P.C. statement disclosed that at around 11.00 a.m., his son Vikas Mehta had made a telephone call informing that the door of the house was locked from inside and despite his best efforts, he could not find Neha. On that, he came at Shalimar Bagh; his son Vikas Mehta called Ravinder Chauhan to break open the door. The appellant in 313 Cr.P.C. statement did not state if he had called his father Jeet Lal Mehta on phone at around 11.00 a.m. It was not explained as to what had led the appellant to call his father Jeet Lal Mehta. Nothing has been explained as to why the intimation about the occurrence was not conveyed to the police promptly. No explanation has come forward as to why the victim's parents were not informed about it at the earliest. Instead of informing the police and victim's parents, the appellant went to call PW-3, a key maker, at BH Block market, Shalimar Bagh to get open interlock of the main door. As per Ravinder Chauhan's testimony as PW-3, the appellant had approached him at about 02.00 or 02.30 p.m. He accompanied the appellant to the spot and in the light of candle had prepared key of the interlock. The door, however, could not open as it was bolted from inside. With the help of a screw driver, he removed the bolt and opened the door. After opening the door, he saw a

lady hanging from the ceiling fan. Due to fear, he left the spot without taking the remuneration and informed the police at PS Shalimar Bagh. Apparently, the appellant had consumed precious time before informing the police at around 03.15 p.m. As per PW-3's testimony, it was he who had gone to report the incident to PS Shalimar Bagh. DD No.20A (Ex.PW-5/A) records the appellant's arrival at the Police Station at around 03.15 p.m. The appellant did not bother to summon any doctor at the spot or to take the victim to the hospital. The inordinate delay in lodging the report with the police has remained unexplained. It exhibits abnormal and unnatural conduct of the appellant and his father Jeet Lal Mehta.

7. Post-mortem examination on the victim's body was conducted by PW-18 (Dr.V.K.Jha) on 16.11.2010 at around 03.00 p.m. As per post-mortem report examination (Ex.PW-18/A); following external injuries were noted on the body :

"1. Bruise of size 3 cm x 2 cm on left leg.

2. An obliquely placed ligature mark present on front and sides of neck, going upwards and backwards towards posterior hairline. The length of the ligature marks is 28 cm and width is 3.4 cm. There is knot on right side of the neck in posterior hairline. Ligature mark was placed 5 cm below chin and 5 cm and 3 cm below right and left ear lobule respectively on sides. The skin over the ligature mark was hard and parchmented. On dissection of the

neck tissue underneath the ligature mark was pale and glistening.”

8. Cause of death was opined asphyxia as a result of ligature pressure over neck structure produced by ante-mortem ligature hanging. Injury No.1 mentioned in the post-mortem report was opined to have been caused by striking with a hard object. The detailed subsequent opinion is Ex.PW-18/B. The testimony of the witness remained unchallenged in the absence of cross-examination. Needless to say, before the victim committed suicide, she was physically tortured and beaten. The victim and the appellant were the only occupiers of the matrimonial home on the day of occurrence. The victim was hale and hearty and nothing is on record to infer if she was suffering from any physical ailment whatsoever. The appellant did not claim if the victim was depressed before he left at around 09.00 a.m. None else had access to the matrimonial home to inflict injuries on the victim's body. It was for the appellant to explain as to how and in what circumstances, the victim had sustained injury No.1 described in the post-mortem examination report and who was its author. No such explanation whatsoever has come forward.

9. Material document to infer the appellant's guilt is the complaint (Ex.PW-8/A) lodged by the victim with the SHO PS Shalimar Bagh against him for treating her with physical and mental cruelty. PW-13 (HC Sarojini) deposed that on 02.08.2010 at around 02.00 p.m. Neha Mehta (since deceased) came and handed over a written application. After recording DD No.14A, she handed over the complaint to HC Ram Asrey for further investigation. PW-8 (Ram Asrey) admitted receipt of complaint (Ex.PW-

8/A) on 02.08.2010. Strange enough, he did not take any action on the complaint on the pretext that it did not contain any telephone number to contact the complainant and record her statement. Noting his conduct, the learned Presiding Officer made the following observations.

“Report is submitted after the death, which clearly shows that it was manipulated. There is address also of the complainant on the complaint, despite that no effort was made by this witness, who was duty bound to meet the complainant and record her statement. He has committed dereliction of duty. Action be taken against him”.

10. Complaint (Ex.PW-8/A) speaks volume about the atrocities committed by the appellant upon the victim. This complaint was lodged much prior to the victim taking the extreme step to end her life. Even on 02.08.2010, she was fed up with the cruelties and atrocities inflicted upon her by her husband. She categorically disclosed in the complaint (Ex.PW-8/A) that since the date of her marriage, she was constantly beaten by the appellant and was forced to leave the matrimonial home to stay with her parents. No plausible explanation has been offered by the appellant as to what had compelled the victim to approach the police to lodge complaint against him for physical and mental torture. Seemingly, the Investigating Officer did not take the complaint seriously and no action whatsoever was taken against the appellant on victim's complaint. The Trial Court has rightly noted the slackness and negligence on the part of HC Ram Asrey and

to initiate departmental proceedings against him. His timely intervention could have saved a precious life. The appellant had made the victim's life miserable. There are no valid reasons to disbelieve the version narrated by the victim in her complaint (Ex.PW-8/A). She was fair enough not to implicate her in-laws whatsoever. She even did not allege if she was forced or compelled to bring dowry from her parents.

11. Reliance has been placed by the appellant on a document (Ex.PW-9/DA) whereby the victim had voluntarily accompanied with her mother and sister Shivani to her parents' house and she did not implicate the appellant or any of his family members for any dowry demand. I have scrutinised the document (Ex.PW-9/DA). It records that the victim had accompanied her mother and sister on 31.03.2010 to her parents' house of her own. She did not hold her in-laws responsible for her departure from the matrimonial home. It is, however, unclear as to how and in what situation, the document (Ex.PW-9/DA) came into existence. Generally, at the time of leaving the matrimonial home, such documents are rarely executed. The appellant has not given any plausible reason as to what had forced the victim to accompany her mother and sister on 31.03.2010 to her parents' house. Apparently, everything was not normal at matrimonial home and it had forced her to leave the matrimonial home to stay with her parents. It falsifies appellant's claim that everything was normal and the victim was annoyed with her mother's adamant conduct whereby she had declined to send victim's sister and brother to the matrimonial home on her repeated asking. It has not been clarified as to why victim's mother would not send her son or daughter to the victim's matrimonial home. Over such a trivial issue, the young married lady was not expected to commit suicide.

12. PW-9 (Neeru) – victim's mother and PW-14 (Baldev Raj Bhardwaj) – victim's father have deposed about the physical and mental torture to the victim. They had no extraneous consideration to falsely implicate the appellant.

13. Undisputedly, the appellant was involved in various criminal cases before the matrimonial alliance. Nothing is on record to show if the victim or her parents were informed about the appellant's involvement in several criminal cases prior to solemnization of the marriage. Soon after the marriage, the appellant was arrested in a car theft case; he remained in judicial custody for sufficient duration. The appellant was informed to be involved in eighteen criminal cases of theft, snatching, excise and arms, etc. True, in some cases, he has got acquittal but it does not clear his criminal background. Status report filed along with the appeal file records his involvement in fifteen different cases mainly at PS Najafgarh. In case FIR No.347/2004 under Sections 399/402 IPC at PS Najafgarh and in other case FIR No.182/2006 under Section 61-1-14 Excise Act, he is shown to have been convicted. Offence under Section 379 IPC in FIR No.927/2007, PS Najafgarh has been compounded. Two cases vide FIR Nos.632/2007, PS Tilak Nagar under Section 379 IPC and 543/2008, PS Dwarka under Sections 399/402 IPC and Section 25 Arms Act were pending trial. Needless to say, the victim was not in a position to bear physical and mental torture considering the criminal background of the appellant.

14. In 313 Cr.P.C. statement, no justification whatsoever has been offered by the appellant as to why the victim, a young lady aged around 19 years was forced to take the extreme step to end her own life after a short stay in the matrimonial home. Undoubtedly, she was compelled or forced to

commit suicide by the unfortunate situation and circumstances surrounding her life and untold miseries and hardships faced by her within the confines of the four walls of her matrimonial home. She had entered such home with hope of leading a long and blissful married life but this hope, did not last long, nor her life.

15. In 313 Cr.P.C. statement, faint attempt was made by the appellant to shift the blame upon victim's mother. The appellant claimed that Neha was depressed due to her mother's conduct as she never sent Shivali and Shivam to her house despite her several requests. He further alleged that after a gap of 2-3 days, Neeru - victim's mother used to quarrel with her husband Baldev Raj Bhardwaj. Due to her family problems, the victim took the wrong step. This defence deserves outright rejection. Nothing has surfaced to show if the victim had annoyance with her mother and she was reluctant to send Shivani and Shivam to her matrimonial home. Nothing is on record if the victim was suffering from depression or was so medically treated any time. The allegations of frequent quarrels between victim's parents are without any foundation.

16. In '*Vajresh Venkatray Anvekar vs. State of Karnataka*', 2013 (3) SCC 462, in somewhat similar circumstances, the Court observed :

“6. Two most vital circumstances which must be kept in mind while dealing with this case are that Girija had committed suicide in the matrimonial home and her death took place within seven years of her marriage. Presumption under Section 113A of the Indian Evidence Act, 1872 springs into action which says that when the question is

whether the commission of suicide by a woman had been abetted by her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband. The question is whether the Appellant has been able to rebut this presumption.

7. Medical evidence is of great importance in this case. PW 7-Dr. Sailaja had done Girija's post-mortem. She found the following injuries on Girija:

- 1. On right side of head there was little swelling and wound on the forehead.*
- 2. On the right eye lower eyelid and on the neck there was weal's of specific area and the eye was bled.*
- 3. There was swelling on the right side of neck.*
- 4. On the right hand thumb bottom there was blue mark having an area 3'x2 1/2'.*
- 5. To the inner side of the arm the blood was clotted having an area of 2' x 1'.*
- 6. To the inner side of the wrist the skin was blackened having an area 1' x 1/2'.*
- 7. Below the thumb the blood was clotted covering an area 2' x 1'.*

Dr. Sailaja opined that cyanide poisoning was the cause of death. She stated that all the external wounds were caused prior to post-mortem. According to her, the wounds on the right side of head can be sustained if a person is beaten with hands. According to her report, they could be caused by hard and blunt object when the deceased was alive. In the cross-examination, it was suggested to her that if the dead body falls on rough surface, the wounds, which she had seen, could be caused. She denied the suggestion. Thus, it is clear that Girija was beaten up prior to the death. In the facts of this case, it is difficult and absurd to come to a conclusion that the injuries were self-inflicted. Pertinently, Girija died in her matrimonial home. We have no hesitation, therefore, in concluding that prior to taking cyanide, Girija was assaulted in her matrimonial home. PW 6- Laxman Kudani, the then Tahsildar and Taluka Magistrate Karwar who drew the inquest panchnama also referred to blackening of the skin at the wrist and on the left and right side of the cheeks of the dead body. He denied the suggestion that because of the pressure exerted by PW 1-Suresh, it was so stated in the inquest panchnama.

(Emphasis Given)

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XXXX

XXXX

14. The tenor of the judgment suggests that wife beating is a normal facet of married life. Does that mean giving one or two slaps to a wife by a husband just does not matter? We do not think that that can be a right approach. It is one thing to say that every

wear and tear of married life need not lead to suicide and it is another thing to put it so crudely and suggest that one or two assaults on a woman is an accepted social norm. Judges have to be sensitive to women's problems. Perhaps learned Sessions Judge wanted to convey that the circumstances on record were not strong enough to drive Girija to commit suicide. But to make light of slaps given to Girija which resulted in loss of her eyesight is to show extreme insensitivity. Assault on a woman offends her dignity. What effect it will have on a woman depends on facts and circumstances of each case. There cannot be any generalization on this issue. Our observation, however, must not be understood to mean that in all cases of assault suicide must follow. Our objection is to the tenor of learned Sessions Judge's observations. We do not suggest that where there is no evidence the court should go out of its way, ferret out evidence and convict the accused in such cases. It is of course the duty of the court to see that an innocent person is not convicted. But it is equally the duty of the court to see that perpetrators of heinous crimes are brought to book. The above quoted extracts add to the reasons why learned Sessions Judge's judgment can be characterized as perverse. They show a mindset which needs to change. There is a phenomenal rise in crime against women and protection granted to women by the Constitution of India and other laws can be meaningful only if those who are entrusted with the job of doing justice are sensitized towards women's problems.

15. In the ultimate analysis we are of the opinion that the Appellant has not been able to rebut presumption under Section 113A of the Evidence Act. Girija committed suicide within seven years from the date of her marriage in her matrimonial home. Impact of this circumstance was clearly missed by the trial court. The evidence on record establishes that Girija was subjected to mental and physical cruelty by the Appellant in their matrimonial home which drove her to commit suicide. The Appellant is guilty of abetment of suicide. The High Court has rightly reversed the judgment of the trial court acquitting the Appellant. Appeal is, therefore, dismissed.”

17. In ‘*Satish Shetty vs. State of Karnataka*’, 2016 (12) SCC 759, the Court held :

“18. On a plain reading of Section 498-A it transpires that if a married woman is subjected to cruelty by the husband or his relative, the offender is liable to be punished with the sentence indicated in the section. But cruelty can be of different types and therefore what kind of cruelty would constitute offence has been defined under the Explanation. As per first definition contained in clause (a) – it means a wilful conduct of such a nature which is likely to drive the victim woman to commit suicide or to cause grave injuries to health and life, limb or health (mental or physical). The other definition of cruelty is contained in

clause (b) and is attracted when a woman is harassed with a view to coercing her or any of her relation to meet any unlawful demand for any property or valuable security or is on account of failure to meet such demand.

19. In the present case after noticing the injuries on the person of the victim which is not at all explained by the appellant husband although in the fateful night he and the deceased slept together in the same room before she consumed poison, the High Court has come to a well-considered finding in para 42 of the impugned judgment that the deceased was being harassed both physically and mentally and in direct as well as indirect ways for non-compliance with the demand of the accused for ₹1,00,000 for investment in his wine business. The High Court found that such harassment falls squarely under clause (b) of the Explanation of Section 498-A. We find no good reason to take a different view.

(Emphasis supplied)

18. It further held :

“16. So far as the second contention is concerned, the same needs to be noticed only for rejection. To be fair to the learned counsel, he has not dealt on this contention at any length nor has cited any judgment. The High Court on the other hand dealt with the issue of conviction under Section 306 IPC in the absence of a charge under that head in detail in paras 44 and 45. It has

also noticed some judgments of the Karnataka High Court and this Court in para 44. The issue is definitely not res integra in view of the judgment of this Court in somewhat similar circumstances in K.Prema S.Rao v. Yadla Srinivasa Rao. In that case the acquittal of the husband of the deceased under Section 304-B IPC was not reversed but this Court while upholding the conviction of all the three accused under Section 498-A IPC, further convicted the husband of the victim under Section 306 IPC after discussing issues relating to the absence of a charge under Section 306 IPC in a case of suicide when the relevant and material facts are already part of charge under Sections 468-A and 304-B IPC. That judgment rendered by a Bench of three judges in somewhat identical facts, in our view leaves no scope for accepting the second contention on behalf of the appellant.”

19. This Court finds no sound reasons to deviate from the observations recorded by the Trial Court in para 123 of the impugned judgment which reads as under :

“The allegations against the accused Vikas Mehta are of inflicting extreme mental and physical cruelty upon his wife Neha (deceased). He is a wife-beater who from the day of the marriage had been regularly beating his wife and fed up with the atrocities, Neha had even previously gone to the police and made a complaint to

them. Being fed up with the atrocities, physical torture and harassment inflicted upon her, she decided to end her life. It is this torture and harassment inflicted upon her by the accused which instigated and enticed Neha to end her life on account of which she committed suicide by hanging herself. This fact is confirmed from her complaint to the Police Ex.PW8/A where she states that her husband Vikas Mehta used to harass and beat her almost regularly and she was fed-up of his atrocities and could no longer stay with him on account of the physical torture and harassment inflicted upon her. In her complaint to the police the words “..... main Neha Mehta apne pati ke atyaacharoon se dukhi hokar ek jori kapron mein apni mataji ke yahan jaa rahi hoo...” and further when she states “..... Mere pati ka naam Vikas Mehta / Sanju Mehta hai. Meri shaadi san 2 November 2009 dinank ko hui thi. Jab se elkar aaj tak vah mujhe maarta raha hai. Jiske karan main uske atyacharoon se bahut dukhi hokar apne mata-pita ke yahan hamesha ke liye rehne jaa rahi hoon....” reflects the kind of torture which the deceased had faced in the hands of her husband Vikas Mehta from the first day of her marriage. She has not named anybody else and has held Vikas Mehta solely responsible for her condition. It is writ large that Vikas Mehta had been battering his wife from the very first day of his marriage which had become intolerable for the deceased. I may observe that Abetment involves a mental process of instigating a person or intentionally aiding a

person of doing a thing and in the present case the positive act attributed to the accused Vikas Mehta (not of her other in-laws i.e. father in law Jeet Lal Mehta, mother in law Asha Rani and Sweety @ Suman sister in law who were residing separately) is of infliction of physical violence upon the deceased. The evidence on record shows that this is not a case where the deceased Neha could be held to be hypersensitive. Rather, on the contrary it is writ large that even after her deceitful marriage in which the criminal background of her husband Vikas Mehta was withheld from her she continued to stay with him. Within almost month and a half of his marriage Vikas Mehta back to jail leaving his newly married wife at the mercy of his parents. Neha continued to stay with them without any complaints but Vikas Mehta was the one who inflicted physical violence on her right from the date of his marriage and made life miserable for her compelling her to return to her mother's house. Thereafter again she tried to adjust with him when she and Vikas Mehta were separated from the rest of the family and started residing on rent at Shalimar Bagh. The bruises on her body as evident from the postmortem report confirms that even thereafter Vikas Mehta did not mend his ways and hence being fed up of being beaten up regularly she decided to end her life."

20. The impugned judgment based upon fair reasoning warrants no intervention. Where, because of the cruelty inflicted on the wife by the

accused continuously, incessantly and over a period of time, she was driven to the act of suicide; there being a nexus between the acts of the accused that pushed the wife to suicide, conviction under Section 306 IPC for abetment of suicide would be justified. Conviction under Sections 498A/306 IPC stands affirmed.

21. Nominal Roll dated 13.07.2015 reveals that the appellant has already undergone four years, seven months and twenty-two days incarceration besides remission for four months and fifteen days as on 10.07.2015. His overall jail conduct is satisfactory. He is aged around 28 years. It is informed that he belongs to a poor strata of the society. He has done mechanical training of six months in Electricals and Certificate of Refrigeration and Air Condition during custody (Certificate Annexure 'A'). He has also attended the training of volunteer teachers for conducting basic literacy class for adults conducted by Jamia Millia Islamia, New Delhi, during his detention. Certificate (Annexure 'B') has been placed on record.

22. Considering the facts and circumstances of the case, the substantive sentence of RI for ten years stands modified to RI for eight years. Other terms and conditions of the Sentence Order are left undisturbed.

23. Appeal stands disposed of in the above terms. Trial Court record be sent back forthwith with the copy of the order. Intimation be sent to the Superintendent Jail.

(S.P.GARG)
JUDGE

APRIL 13, 2017 / tr