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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.A. 247/2002

Reserved on: 8th March, 2018

Decided on: 23rd March, 2018

LEKH RAM & ANR

.....Appellants

Through: Mr. R.N. Mittal, Sr. Adv with
Ms. Inderjeet Sidhu (DHCLSC) and
Mr. Manoj Kumar, Advs

versus

STATE OF DELHI

....Respondent

Through: Ms. Kusum Dhalla, APP for the State
Insp. Arvind Kumar, PS Jaffar Kalan

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE I.S. MEHTA**

JUDGMENT

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Dr. S. Muralidhar, J.:

1. This appeal is directed against the judgment dated 11th March 2002 passed by the learned Additional Sessions Judge, New Delhi in Sessions Case No.190/1999 arising out of FIR No.93/1999 at Police Station ('PS') Jaffar Pur Kalan convicting both the Appellants for the offences under Sections 498A and 304B IPC. The appeal is also directed against the order on sentence dated 19th March 2002 whereby, for the offence under Section 304B IPC, both the Appellants were sentenced to undergo imprisonment for life and, for the offence under Section 498A IPC, to undergo imprisonment for three years and fine of Rs.10,000/- each. Both the sentences were

directed to run concurrently.

The charges

2. The Appellant No.1 in this appeal is Lekh Ram (A-1) and Appellant No.2 is his son, Parambir (A-2). Both A-1 and A-2 were charged along with the co-accused Karan Singh and Darshna (both proclaimed offenders (POs) at the relevant time) with subjecting Promila (the deceased) between 9th March 1999 and 11th July 1999 to cruelty and thereby committing an offence punishable under Section 498A read with Section 34 IPC.

3. The second charge was that on 11th July 1999, A-1 and A-2 along with the aforementioned co-accused subjected Promila to cruelty and harassment in furtherance of their common intention soon before her death and then committed her dowry death punishable under Section 304B read with Section 34 IPC. An alternative charge was that A-1 and A-2 along with the co-accused committed her murder thereby committing an offence punishable under Section 302 read with Section 34 IPC.

Background

4. The background facts are that Lekh Ram (A-1) was employed with the Delhi Police at the relevant time. His son, Parambir (A-2), was looking after the agricultural activities at Village Karkari. A-2 got married to the deceased on 9th March 1999.

5. According to the prosecution, whenever the deceased visited her parental house after marriage, she disclosed to her mother, Satyawati (PW-4), that she was being beaten by her in-laws and harassed for a Maruti car to be brought for them. The prosecution case is that on 11th July 1999, Nitin (PW-

7), the cousin of the deceased and a nephew of PW-4, had gone to the matrimonial house of the deceased. The deceased is supposed to have told PW-7 that A-1, A-2 and her *Jeth* (Karan Singh) and *Jethani* (Darshna) were harassing her and were beating her for not bringing a Maruti car.

6. At around 3:30 pm, PW-7 went to the house of PW-4 and told her about the complaint made by the deceased. At 8 pm on that very day, PW-4 received a call from Karan Singh stating that the condition of the deceased was serious and that she should immediately reach Palam where an aunt of A-2 lived. PW-4 then gathered her relatives and all of them went to Palam in two cars. They reached around 12:00-12:30 am in the night, i.e. the early hours of 12th July 1999. There they found Karan Singh standing at the Palam Chowk. They followed his car to the village and upon reaching there they found that a Maruti car was standing outside the house of aunt of A-2 and behind it was a PCR van. When PW-4 opened the door of the Maruti Car, she found the dead body of her daughter lying in the back seat.

7. At around 12.40 am on 12th July 1999 a message was received at PS Dwarka that a call had been made by a person stating that the body of his sister who had died under suspicious circumstances was lying in a Maruti car in Palam village. On receiving this message Head Constable (HC) Amar Singh (PW-8) of PS Dwarka along with Constable (Ct.) Bhoop Singh reached Palam village. There he found the deceased lying dead in the rear seat of the Maruti car. The car and the body of the deceased were both then taken to the Dwarka PS. Since the matter related to PS Jafarpur Kalan, a message was sent to the said PS by wireless. PW-8 stated that when he

reached the spot he found the two accused, Karan Singh, and Darshna present there. He also saw Baljeet (PW-3) the uncle of the deceased, Kulbir (PW-6) and her grandfather Ganga Ram (PW-5).

8. At around 2:17 am in the morning of 12th July 1999 a message was received at PS Jafar Pur Kalan from the PCR that in Palam Village in a car, the sister of the caller was lying dead. The name of the deceased was disclosed as Promila, daughter of Inderjeet (PW-2), who was married 3-4 years ago to A-2; that at around 8 pm, A-2 had reached his house and found his wife lying dead under the *charpai* and when she was taken to the Janakpuri Hospital, she was declared brought dead and, thereafter, they took her to his aunt's place at Palam Village. The above information was noted down as DD No.6A (Ex.PW-16/A) and entrusted to S.I. Madan Lal (PW-16) who was attached to PS Jaffar Pur Kalan.

9. Accompanied by Constable Mukesh Kumar and Constable Anand Swaroop, PW-16 proceeded to Palam Chowk. He learnt that the dead body has been removed to PS Dwarka by the police. On reaching there, PW-16 found the dead body in the Maruti car standing at PS Dwarka. Head Constable Amar Singh (PW-8) gave PW-16 a DD entry and seizure memo concerning the dead body.

10. PW-16 tried contacting the Sub-Divisional Magistrate ('SDM') and in the meanwhile, sent the dead body to the mortuary. At around 7:00 pm, PW-16 was able to speak to the SDM and explain to him the circumstances. The SDM purportedly asked PW-16 to come at 11:00 am the following day at his Kapasahera office with the relatives of the deceased. PW-16 then

proceeded to Village Karkari and checked the bedroom of the deceased and took into possession her marriage photograph. The place was also got photographed.

Post mortem

11. Meanwhile, on 13th July 1999, the post mortem of the deceased was conducted by Dr. Ashok Jaiswal (PW-1). The alleged history was one of found dead “in suspicious circumstances” on 11th July 1999 at 8:00 pm with injuries on the neck. The body was 5’1” in height. There were as many as seven external injuries. As far as the internal examination was concerned, there was a bruising of strap muscle of neck in front of either side with focal haemorrhages on both sides trachea and the right sub-mendibular region. There was a fracture of the right horn of the hyoid bone with blood at fractured end. An examination of the abdomen and pelvis revealed that the deceased was carrying a three-and-a-half-month old male foetus.

12. The opinion of PW-1 was that the six abrasion injuries were suggestive of application of pressure over the neck structure, manual strangulation while injuries 7 and 8 were defence wounds possibly sustained during the process of application of pressure over neck. Death was due to asphyxia consequent upon manual strangulation. It is opined that the pressure of the neck was sufficient to cause death in the ordinary course of nature. The time since death was estimated to be about 40 hours.

Statement of PW-4 before the SDM

13. In the meanwhile, the mother of the deceased, PW-4 and the other relatives reached the SDM’s office. The SDM then recorded the statements

of PW-4 (Ex.PW-4/A). In this statement which was recorded at 1:30 pm on 12th July 1999, she stated that when PW-7 visited her daughter in her maternal home on 11th July 1999, her daughter disclosed to PW-7 that A-1 and A-2 along with Karan Singh and Darshna were harassing her for a Maruti car to be brought for them. Even earlier, her daughter had disclosed to her that she was being harassed by the said people for dowry.

14. At 8:00 pm on the previous day, i.e. 11th July 1999, Karan Singh had informed her that her daughter's condition was serious and that she should immediately reach to Palam Village. When they went there they found the dead body of the deceased lying in the rear of a Maruti car and that the police had already reached there. Thereafter, the dead body along with the Maruti car was taken to the PS Dwarka. She further stated that after murdering her daughter, the accused were roaming around with her dead body in the car without taking her to any hospital.

15. The SDM then asked her for the details about when the marriage had taken place. She replied stating that the marriage had taken place on 9th March 1999. She further added that when the deceased visited her, she disclosed that A-1, A-2 and her *jeth* and *jethani* were harassing her for bringing a Maruti Car. She further added that on 20th June 1999, Karan Singh had come and threatened her and was in an angry mood. When asked whether she wanted to say anything, she said she was confident that the four accused persons had murdered her daughter.

Investigation

16. Thereafter, an FIR was registered. At the mortuary, the particulars

handed over to PW-16 were three parcels and one sample seal containing clothes, viscera and blood samples of the deceased. At around 11:30 pm on 30th July, 1999, A-1 and A-2 were arrested near their house at Village Karkari Village. However, they could not locate the other two accused, that is, Karan Singh and his wife Darshna. A-2 is stated to have given a disclosure statement (Ex.PW-16/G). The investigation was then handed over by PW-16 to Inspector Rajesh Kumar (PW-12), the Additional SHO of PS Jafar Pur Kalan.

17. Proceedings under Section 82 and 83 of Cr.P.C. were initiated against Karan Singh and Darshna. At the end of the investigation, a charge sheet was filed against A-1, A-2 and the other two absconding accused and vide order dated 15th March, 2000 charges were framed as noted hereinbefore. On behalf of the prosecution, 16 witnesses were examined.

Statement of A-1 under Section 313 Cr PC

18. The defence of the accused requires to be referred at some length. In his statement under Section 313 Cr.P.C., while denying the incriminating circumstances put against him, A-1 stated that on 11th July 1999, Nitin (PW-7) had come to give an invitation as *Sagai* of his sister was to take place on 18th July, 1999. He specifically denied that any of the accused had pressurized the deceased into bringing a Maruti Car. He claimed that he had left for his duty at 6:00 pm on 11th July, 1999. He, however, stated that when he left home for duty, the deceased was alright. At that time Sukhchain, Babloo @ Naresh and his grand-daughter Laxmi were also at home with the deceased. He did not know what happened thereafter.

19. When asked why A-2 had not taken the deceased to a Government hospital, A-1 replied "my son must have been told that Nursing home was better than Govt. hospital". When asked why they did not inform the police themselves about the death of the deceased, he replied "we were waiting for the relatives of Promila to arrival. Thereafter only police would have been informed".

20. Question No.34 was whether he could say who had strangled the deceased in his house and when and why. His answer was as under:-

"As far as I know Sukh Chain and Naresh had committed this murder. My grand-daughter had seen them entering the house. As told to me by my grand-daughter both of them have been taking rounds of our house till Promila came back from field and they entered into the house after Promila came back from the field. It is they who have committed the murder."

21. When asked whether he had anything else to say, A-1 stated as under:-

"There was no dispute or quarrel between my family and family of Promila prior to 11th July. I had received information about Promila when I was on duty. My daughter's Dewar had come to me and informed me that something has happened to Promila and she had been taken to Nursing home and he told me to reach home at earliest. I came home after seeking permission."

Statement of A-2 under Section 313 Cr PC

22. Turning now to A-2, while he too denied many of the incriminating circumstances, Question No.36 was whether he had anything to say about PW-7 having come to meet the deceased at her matrimonial home on 11th July 1999. A-2 stated as under:

"It is incorrect that he had come to meet Promila. He had come to invite me and I accompanied him to his Bua's house at

Ghuman Hera and then I left him at Najafgarh. He had stayed for about 5-10 minutes”

23. A-2 admitted as correct that on 11th July, 1999 at around 8:30 pm, PW-10 had seen A-2 bring the deceased in his hands in an almost unconscious condition and that A-2 asked PW-10 to bring a car. A-2 stated “It is correct that I had asked for a car but I had asked it from Krishan brother of Vajinder. I put Promila in the car along with me and my Tai Bhani and my bhabhi Darshana accompanied me. Vajinder was driving the car.”

24. A-2 also admitted as correct that he had gone to four nursing homes including the Gupta Nursing Home and Khanna Nursing Home and that his father A-1 had come on his own to the house of the aunt of A-2 and that Mukesh, the younger brother of Karan Singh had informed A-1. He also agreed that Baljeet (PW-3), the uncle of the deceased, PW-4 and the grandfather of the deceased and an aunt of PW-3 had come to the Palam Village and had found the deceased lying in the rear seat of the Maruti car.

25. When asked why he did not tell anything to the relatives of the deceased as to what happened to her, A-2 said “I did not tell because I myself was not knowing as to what had happened to her.” A-2 also admitted as correct that the accused had not informed the police about the death of the deceased and that the phone call was made from the house of the son of his aunt.

26. A-2 was specifically asked about having taken her to various nursing homes. A-2 stated “I do not know what has happened to her in my home necessitating her removal to Nursing home. However some neighbour had told me that I should remove her to Nursing home immediately.” When

asked why he did not take her to a Government Hospital, A-2 stated that it was because “they are not good hospital and they did not treat the people.” On his not informing the police, he stated “I did not know as to what had happened to Promila, so I had not given information to the police.”

27. When asked whether he had anything else to say, A-2 stated as under:

“I was coming from fields to my house at about 6.40 pm when Promila met me on the way. She was carrying cow-dung and was going to the field. She told me that my father had left for duty. When I reached home my niece was playing in the house. I untied the buffalo and took them for bathing and water. My Bhabhi was already bathing the buffalo as I tied my buffalos there. I gave bath to buffalo after my bhabhi finished and then came back at home at about 8 or 8:15 pm I tied buffalo and when went to the room the T.V. was on high volume. When I went inside the room I found Promila lying on the floor. When I shook her she did not speak. She had about 15 days back suffer a hysterical attack. I went to my bhabhi house running. My bhabhi accompanied me. 2-4 women were standing in the Gali including my Tai. On their enquiry my Bhabhi told that something had happened to Promila. My Tai also accompanied us and they advised that Promila should to taken some doctor. In the meantime one Madan a compounder living in our village came. He felt the pulse of Promila, and advised that Promila should be taken to Nursing home immediately. In the meantime my brother Karan Singh came there. He went in search of car but could not find it. In the meantime I saw Krishan and told him to bring a car.”

Defence evidence

28. On behalf of the defence, five witnesses were examined. Phool Singh (DW-1) had a shop at the crossing in the village from where DTC and Private buses went towards Najafgarh and Bijwasan. A-1 would come to his shop on a scooter leave it there and then take the bus to go to work. A-1

was, in fact, attached to Zebra-17 PCR Van in which A-1 went from the South-West Zone to Palam. According to PW-1, even on 11th July, 1999, A-1 came on his scooter to his shop. His cross-examination by the APP did not shake his basic testimony that even on 11th July, 1999, A-1 had left his scooter at the shop and then proceeded to work on a bus.

29. DW-2 was Jai Karan who spoke about meeting A-1 between 6:30 and 7:00 pm on the scooter at bus stop in the village. DW-2 was coming from the fields from the opposite direction and when he inquired from A-1 as to where he was going, A-1 replied that he was going on duty and thereafter continued on the scooter towards the bus stop. In his cross-examination, DW-2 stated that he had gone to the local PS but they had asked him to approach the Court.

30. Surjan was examined as DW-3. He stated that on the day of the incident, he heard the sound of Scooter starting and asked his grandson who it was. He was told by his son that it was A-1 going on his duty. DW-3 claimed that he saw the deceased going towards the fields at around 6-6:30 pm. He noticed her coming back from the fields with a *Tasala* full of sand and that she was going back to her house at around 6-6:30 pm.

31. Laxmi (DW-4) is the daughter of Karan Singh and was around 12 years at the time of her examination. In her examination-in-chief she *inter alia* stated as under:-

“On the date of incident my grandfather Lakh Ram was on duty. He had left the house between 6:30 and 7:00 pm. When he left the house I was with my aunt deceased. When my grandfather left their house at that time two boys had come in

our house to take cassette since they had told this fact to my grandfather Lekh Ram. When my grandfather left they were at home. I was told by my grandfather to remain with my Aunt (deceased) since my uncle was in the field for giving watering the field. My Chachi told me that she had prepared rice and I should eat rice. After serving my rice my Chachi went for throwing cow dung and those two boys also left with my Chachi. Thereafter my chachi came after about 15-20 minutes, and those two boys also came along with her. During the absence of my Chachi I was at house of my Chachi.”

32. DW-4 continued as under:-

“After my Chachi came back and those two boys also came back. My Chachi told me to go to my home and I went to my home and she told me that if I told about them then she would beat me. It was around 8:15 pm at that time. In my neighbourhood one, Tayee (aunt) she had told me to bring vegetable and I went to vegetable. After some time my Chacha crying Bhabhi Bhabhi Promila is unconscious. Then my mother went to house of my Chachi. Thereafter I do not know anything. My statement was recorded after two months, which I had signed Ex. DW4/A bears my signatures at Point A.”

33. In her cross-examination by the learned APP, she stated as under:-

“Our house where we live separately is quite far off from house of my Chacha. It takes 5-10 minutes in reaching there and we were living there for 9-10 months prior to the incident. Now I am living with by Bua. I do not know where my parents are. I have not seen them for last three years. We are five brothers and sisters. Two are younger to me and two are elder to me. The one younger to me stays with me and next one stays with my other Bua. I am student of VI class. I do not know the name of school. It is in village Mahipal Pur. While I was living in Village Karkari then also I was going to school. It was Nagar Nigam Primary School. I took admission in Mahipal Pur School in V Class and now I am in VI class. I took admission about--- years ago. The house no. of my Bua 1995 I do not know name

of my Bua It takes about half-an-hour from my Bua's house to the ____ My elder brother lives with some other relatives. I do not know where he lives. My sister had left the school. I had started studying in V Class when this incident took place in Village Kharkhari Rond. My school timing was from 8 to 1 or 9 to 2 pm. It was Sunday on the date of incident. I had come alone to my Chacha's house in the evening. When I went there apart from my grandfather and Chachi no one else was there."

34. In answer to the Court question, she added as under:-

"The two boys who had come had said Namaste etc. to my Dada Lekh Ram. Thereafter, after enquiry my Dada (Lekh Ram) had told Chachi as to why they had come. My Chachi told that they had come to take cassette. My dada thereafter had stayed only for 3-4 minutes since I went out to play outside. I do not know what he said to my Chachi. I had started playing with other children of Mohalla. I cannot tell the names of the children with whom I was playing. I played only for 3-4 minutes then came back. When I came back after playing after 3-4 minutes my dada was still at home. I had not seen those two persons prior to that day. Nor I had seen them at any time after that day. My dada was also not knowing them when he had talked to them. They had told my dada that one was from Ghumanhera and other was from Dichaun. My aunt had served them tea. My aunt left for throwing cow dung within 5-10 minutes of my dada's leaving the house. When my grandfather left them my aunt had put water on gas for preparing tea. I do not know whether only those two persons took tea or my aunt took tea. I was served meals at that very place where those two persons had taken tea. It had taken hardly 6-7 minutes in preparation of tea and taking of tea by/those persons. I was still taking rice when Chachi had left with those two persons. I do not know whether my Chachi had searched for the cassette or not nor my Chachi had said that she would search for the cassette."

35. The further question and answers during her cross-examination was as

under:-

“Q: When your aunt left the house after how much time she came back.

Ans: The witness first stated 15 minutes, then thought and stated it must have taken half an hour.

I cannot say that if one has to start from house of my Chachi then to go our house in the plot then pick up Gobar and then go to fields for throwing Gobar wash and come back it will take one hour.

Ans: I cannot say.

My aunt (Chachi) had come back to house around 7:30 pm. I do not remember when she had left. I do not know on what conveyance, cycle, scooter those boys had come, as no vehicles can stand in the Gali. Those boys had stayed for half an hour after they had come back with Chachi from the field. At that time I was at that very home with Chachi and both two boys. They did not speak for half an hour and just keep on sitting and watching T.V. I do not know which play was going on T.V. My Chachi was also watching TV and nobody talked with anybody. Since I had heard when they talked to my dada about the place where from they had come I did not ask them anything. Neither those two boys asked me anything about the Class in which I study. My Chachi did not search for any cassette during half an hour. Neither my statement Ex. PW4/A was read over to me nor I had myself read this statement. Police told me to sign the statement and I signed this statement. My father had come back from his duty at between 9:30 and 9 pm. When I had reached the house from house of my Chachi, my father had not come back when my chachi had come to my house stating that his wife was unconscious even at that time my father had not come back. I did not go to house of my Chachi after hearing this news. Nobody restrained me from going there as mummy already gone there. None of my brother sister had gone there. I do not know if anybody from my

neighbourhood had gone there.”

36. In her further cross-examination, she added as under:-

“It is wrong to say that my chachi had not given rice to me nor she threatened me that she would beat me if I told anything about the boys to anyone. It is wrong that I made statement in the court at the instance of accd. Persons at their tutoring. It is wrong that earlier also I had made statement to the police us tutored.”

37. At this stage, it requires to be noticed that Karan Singh and Darshna were subsequently tried separately and both of them were acquitted by the trial Court by a judgment dated 7th April, 2010.

38. HC Naresh Kumar was examined as DW-5. This witness, as already noticed, was attached to the Zebra 17 PCR Van of South-West Zone. He stated that on 11th July, 1999, he gave charge of the Zebra 17 PCR Van to A-1. He brought the original register which had the relevant entry (Ex.DW-5/A). This witness was not seriously challenged by the APP.

39. Mr. P.K. Bhardwaj, Deputy Director, Ministry of Home Affairs was next examined as DW-6. He brought with him the report sent by the Joint Commissioner of Police on 21st September, 1999. This was on the basis of a complaint given by A-1 to the Commissioner of Police (Ex.DW-6/B). Constable Krishan Kumar (DW-7) verified that he had accompanied A-1 in the PCR Van to Palam. Vijay Kumar, Welder in the DTC (DW-5), it should have read as DW-8 but was wrongly typed DW-5. This witness brought with him the attendance and salary record of PW-2. This showed that PW-2 was very much in the rolls of the DTC from June, 1999 to June, 2000.

Impugned judgment of the trial Court

40. In the impugned judgment, the learned trial Court came to the following conclusions:

- (i) The deceased must have been killed around 6-6:30 pm in the house of the A-1 and A-2. The accused persons must have spent around 1 and half hours in taking the body of the deceased to different places and finally to Palam Village.
- (ii) A deliberate attempt had been made to mislead the police by stating that the deceased had been married to A-2 3-4 years ago when she had been married only four months ago.
- (iii) The investigating officer ('IO') had not bothered to collect evidence from the house where the deceased was killed in Karkari.
- (iv) It was surprising that A-2 who had taken his wife to various nursing homes did not inform the police in time about the incident.
- (v) A-2 had deliberately removed the body of the deceased from Kharkhari Rond to Palam in a car so that the entire attention was on dead body of Promila in Palam Village.
- (vi) The IO did not bother to go to the house of the accused in Kharkhari Road and did not collect further evidence about involvement of this accused in this crime. It seems that a kind of sympathy was working in the mind of IO for accused persons since Lekh Ram (A-1) was in police.
- (vii) The trial Court referred to the inquiry into the complaint made by A-2 and the DCP. After inquiry, it came to the conclusion that DW-4 (Laxmi) was a tutored witness. The two boys Sukhchain & Babloo @ Naresh had not come to the house of the accused but came only on

17th November, 1999 at around 5:30 pm

- (viii) The entire conduct of A-1 and A-2 made it abundantly clear that after killing the deceased for their greed of dowry wanted to hush up the matter and wanted to mislead the investigation.
- (ix) In all the three defence witnesses, it was attempted to give the time of return of deceased between 6 to 6:30 pm. The post mortem report nevertheless showed that death had taken place either at 7:30 pm itself or even two hours earlier.
- (x) The deceased was killed inside the house when both A-1 and A-2 were present. A-1 asked the A-2 to take the body of the deceased to nursing homes although she was already dead. This was to confuse the timing of the killing of the deceased. The only reason of their not taking the deceased to the Government Hospital immediately was to confuse the timing of the killing and show that A-1 was on duty.
- (xi) The testimonies of PWs 3, 4 and 5 were about their reaching Palam Village after hearing the news of Promila having been strangulated. The trial Court concluded that since there were several injuries on the body of the deceased, she obviously put up a struggle. Consequently, both accused were held guilty of the aforementioned offences and sentenced in the manner indicated hereinabove.

Offence under Section 304 B IPC

41. One of the first issues to be addressed is whether it can be said that the prosecution has proved beyond reasonable doubt whether soon before her death, the deceased was subjected to cruelty. There is a common ingredient in both Section 498A IPC and Section 304B IPC. Section 304B (1) lists out

the following conditions that are required to be fulfilled for the offences of 'dowry death':-

- (i) The death of the women should occur otherwise then under normal circumstances,
- (ii) It should be within seven years of her marriage and
- (iii) It has to be shown that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of her husband,
- (iv) Was in connection with any demand for dowry.

42. As far as Section 498A is concerned, it has to be shown that the deceased woman was subjected by the husband or the relative of the husband to cruelty. The explanation to Section 498A defines cruelty under Clause (b) as "harassment of the women whether such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand".

43. In the present case, the post mortem report confirms that death was by strangulation and, therefore, it was under unnatural circumstances. The death occurred within four months of the marriage. Therefore, the condition of death having occurred within 7 years of marriage is also fulfilled.

44. The third and most important ingredient is that she should have been subjected to cruel harassment 'soon before her death'. The period of four months itself being soon after her marriage, it can be safely concluded that period as such should satisfy the requirements of soon before her death.

45. The only question, therefore, that remains as far as Section 304B IPC is concerned, is whether she was subject to cruelty or harassment by A2, that is, her husband and his family members which in this case is A-1.

46. At this juncture, it should be noticed that the presumption that is attracted for the purpose of Section 113B of the Indian Evidence Act ('IEA') also requires the prosecution to first show that soon before her death, the deceased was subjected to cruelty or harassment for or in connection with any demand for dowry. Only if this condition is satisfied, will there be a presumption that the person who has subjected her to such cruelty or harassment has caused the dowry death.

47. The evidence in relation to cruelty and harassment of the deceased has come through two witnesses, i.e. her mother (PW-4) and her cousin brother (PW-7).

Evidence of PW-7

48. The Court would first like to discuss the evidence of PW-7, since it is he who met the deceased on the date of her death. It is seen that statement of Nitin (PW-7) under Section 161 Cr.P.C. was recorded only on 14th July, 1999 whereas he was there throughout. By this time, the statement of PW-4 had already been recorded by the SDM. The challenge to the statement of Nitin by the accused is that he had come there not as a casual visitor but to invite her in-laws for the *Sagai* ceremony of his sister.

49. However, in his cross-examination Nitin denied this. His statement was "I had gone on 11.07.1999 to house of my sister in the day, in order to meet

her. I had no other work.” He denied that anyone had left him at the bus stop from Promila’s house. He stated “I have two real sisters. None of these two sisters were married prior to 11.07.1999 nor their *Sagai* had taken place. One of my sister’s *Sagai* had taken about 2-3 months back on 19th. The talks of *Sagai* of that sister were not going on during those days. It is incorrect to say that I had gone to invite Promila for the *Sagai* ceremony. I had gone to her just to meet her. It is incorrect that on 11.07.1999, I had accompanied Paramvir to the house of Bablu”.

50. This is totally contradicted by PW-4 herself when she states in her cross-examination that “It is correct that Nitin had gone to invite Promila on the *Sagai* ceremony of Baljit’s daughter. *Sagai* had to take place at our own house as entire family is a joint family and therefore there was no question of giving me invitation however *Sagai* not taken place because before *Sagai* could take place, Promila was killed on 11.07.99 on the day when Nitin had gone to extend the invitation of *Sagai*. Bablu is my nephew. He is also called Naresh. (Naresh is my husband’s sister son). I do not know if on 11.07.99 Nitin and Paramvir had gone to Ghumanhera. Paramvir had not come to our house on that day.”

51. These are entirely contradictory versions coming from two PWs. It is interesting that the depositions of both PWs7 and 10 were recorded on the same day, that is, 15th March, 2001. This throws serious doubts on what actually transpired when Nitin went to meet Promila on 11th July, 1999. The entire story of the demand for the Maruti Car and deceased being subjected to harassment at the hands of the accused on 11th July, 1999 has been spoken

to only by Nitin.

52. The denial by PW-7 that he was not dropped by anyone is contradicted by what A-2 himself states in the following words

“On that day I had started water pump in my field. I had come at my house at about 10 am for taking meal. When Nitin came, Nitin invited me and Promila on 18th to attend *sagai* ceremony of his sister. He talked to my father also. He took tea etc. and then told me to leave him at his bua’s house. After leaving Nitin at Najafgarh I went to my field and again started the water pump. My father went to field at about 4-4:30 pm. After telling me that I should bring buffalo etc. at home as he went to house as he has to go to duty.”

53. There is an aspect of the testimony of PW-7 which makes him an untrustworthy witness. He went to great lengths to deny that a *sagai* ceremony of his sister was taking place and he had gone to the matrimonial house of the deceased to extend an invite for that ceremony. It is clear from the evidence of PW-4 that it is for the above purpose he went to the matrimonial house of the deceased.

Evidence of PW-4

54. If the evidence of PW-7 is kept out of reckoning then we only have the testimony/evidence of PW-4 herself. In her examination-in-chief, she says that after marriage, the deceased used to visit her house and state that she was being harassed by her husband, A-2 and father-in-law, A-1 as well as Jeth, Karan Singh and Jethani, Darshna “for bringing a Maruti Car from her parents”. She further states that whenever she came home, the deceased used to tell PW-4 that she was beaten by her in-laws and harassed for a Maruti Car. The statement of PW-4 was not recorded till 1:30 pm by the SDM on the following day, that is, 12th July, 1999. This was despite the fact

that the police had already been made aware of the death of the deceased at 12:30 am and all of them were available for their statements to be recorded. The delay in this context in recording the statement and registering the FIR is indeed significant.

55. The delay in registering the FIR might not be fatal if the circumstances are otherwise not suspicious. But in the context in which the PWs have spoken about the deceased being subjected to harassment, this delay assumes significance. In her cross-examination, PW-4 states that there was a middle man in the marriage of the deceased, that is, Ghisa Ram who was father-in-law of the *nand* of PW-4. PW-4 states that she had told the said Ghisa Ram about the demand of Maruti Car yet Ghisa Ram was never examined as a prosecution witness.

56. There were several improvements made by PW-4 in the Court which were confronted to her by showing her the statement made to the SDM (Ex.PW-4/A). What she had not mentioned to the SDM, which she had spoken to in the Court were as follows:-

- (a) That deceased was subjected to beatings,
- (b) That Nitin had come to her after meeting Promila about 3 or 3:30 pm when in fact such time was not recorded,
- (c) That Nitin had told her about the accused beating the deceased. What was told by Nitin to her only that they were harassing her.
- (d) About A-1 telling her that they had finished off the deceased and that the police could not harm him.
- (e) That the PCR people did not allow her to make a call to the police

from the PCR Van.

- (f) She mentioned that her husband, Inderjeet (PW-2) had taken *sanyas*, that is, he had renounced the world even prior to the marriage of the deceased.

57. In light of the above improvements and inconsistencies, the Court is not entirely satisfied that it's safe to draw a conclusion as to the guilt of A-1 and A-2 on the basis of the above evidence of PW-4. She is a related witness and her testimony requires careful scrutiny. In other words PW-4 does not give an assurance to the Court that she is truthful and reliable.

58. It has been rightly pointed out by Mr. R.N. Mittal, learned Senior Counsel appearing for the accused that the other witnesses did not mention about PW-4 telling them that the deceased was being subjected to harassment by the accused. Vijender (PW-10) mentioned that A-2 was on visiting terms. Baljeet (PW-3) stated that when the deceased used to come to his house after marriage, she used to say that she was being harassed for dowry. He was, confronted with his previous statement where it was not recorded that she had told him about the demand of Maruti Car. Again in the case of this witness, his statement under Section 161 Cr PC was recorded only on 14th July, 1999. There is merit in the contention of learned Senior Counsel for the accused that if indeed there was harassment of the deceased for dowry, some complaint ought to have been made by PWs 3 and 4.

59. The Court has been shown the record of the trial that separately took place qua the two absconding accused, that is, Karan Singh and Darshana which ended in their acquittal. There, PW-4 has deposed as PW-9. Her

statement there is “My daughter is married with Paramvir on 09.03.1999 as per Hindu rites and ceremonies. She remained happily in her matrimonial house for about 4 months and then started complaining that her husband, father-in-law, jeth and jethani used to harass her for demand of Maruti Car. She used to tell her that in case the car is not given, he would be married again.” In that trial, Kulvir Singh was examined as PW-10 where he said, “the factum of harassment and torture of the deceased was not discussed or brought to my knowledge.” In the circumstances, the question arises whether the allegations made *qua* these two accused are specific enough to constitute harassment soon before the marriage.

60. It is argued by Mr. Mittal that the allegation as to harassment had to be specific. In this context, reference may be made first to the decision in ***Salamat Ali v. State of Bihar AIR 1995 SC 1863*** where it was held that there had to be clear and cogent evidence of harassment and not mere vague allegations. Again in ***Surinder Kaur v. State of Haryana AIR 2004 SC 1747*** the Supreme Court held that if the allegations were not specific, but general in nature, the accused would be entitled to the benefit of doubt. In ***Sunil Dutt Sharma v. State (Govt. of NCT of Delhi) (2014) 4 SCC 375*** the presumption in the context of Section 304B IPC was explained as under:

“So long there is credible evidence of cruelty occasioned by demand(s) for dowry, any unnatural death of a woman within seven years of her marriage makes the husband or a relative of the husband of such woman liable for the offence of “dowry death” under Section 304-B though there may not be any direct involvement of the husband or such relative with the death in question. In a situation where commission of an offence is held to be proved by means of a legal presumption the circumstances surrounding the crime to determine the presence of aggravating

circumstances (crime test) may not be readily forthcoming unlike a case where there is evidence of overt criminal acts establishing the direct involvement of the accused with the crime to enable the Court to come to specific conclusions with regard to the barbarous or depraved nature of the crime committed.”

61. In light of the above legal position, and applying it to the facts on hand, the Court is not satisfied that the prosecution has been able to prove that soon before her death, the deceased was subjected to harassment and cruelty by A-1 and A-2. The only instance to show harassment is the demand for a Maruti car. But we have only the self serving statements of PWs 3 and 4 in this regard. No witness actually talks of this demand for a Maruti car except PW-4 and that too by saying that PW-7 told her about it. But then the evidence of PW-7 himself is of doubtful veracity. PW-4 too does not inspire confidence. Further, as rightly pointed out by Mr. Mittal, the allegations for the purpose of harassment for dowry have to be specific. Here they are general and sweeping. If they had been so severe that would have strained the relations between the families. In those circumstances, it appears unlikely that PW-7 would be going to the matrimonial house of the deceased to invite them for his sister's *sagai*. The Court is therefore of the view that the prosecution has not been able to prove beyond reasonable doubt the key ingredient of both Sections 498 A and 304 B IPC viz., that soon before her death the deceased was subjected to cruelty and harassment by A-1 and A-2.

Rebuttable presumption

62. For invoking the presumption under Section 113B, IEA which is rebuttable, the prosecution has to show in the first place that soon before her

death the deceased was subjected to harassment and cruelty. Even if one were to go by the depositions of PWs 3 and 4 for the purpose of attracting the presumption under Section 113 B IEA, this was a case where the accused have sought to rebut the presumption. The accused have in the first place relied upon a complaint given by A-1 on 25th August, 1999 to the Commissioner of Police which is fairly elaborate. *Inter alia* it was stated in this complaint that there were two persons who were seen by A-1 roaming in the area even as he left for duty at 6:30 pm to attend to his office at 8:00 pm at Vasant Kunj, one was Babloo @ Naresh and the other was Sukhchain. It was stated that the fact that A-1 had left the house before the occurrence could be verified by examining his grand-daughter Laxmi who was present with the deceased shortly before the crime. He pointed out that the deceased had asked Laxmi, the minor child to go to her house and not to disclose about the presence of the two persons who were with the deceased. According to Lekh Ram, these two persons could have only been Babloo and Sukhchain.

63. This complaint was inquired into by the Joint Commissioner of Police, Southern Range, Delhi who submitted a report dated 21st September, 1999. In the said report, he states *inter alia*, notes:

“Two boys, namely, Naresh and Sukhchain have also been examined and local inquiries made revealed that the two young boys were seen only asking address of Lekh Ram around 5:30 pm on 17.11.1999 (it ought to be as 11.07.1999) stating that the deceased was their cousin sister. They had gone to her house in the presence of Lekh Ram to collect the photo album of the marriage of Naresh Kumar @ Babloo Pehlwan. They left only after 10-15 minutes leaving behind Lekh Ram and Promila, the deceased at their house. They did not notice anything adverse during this visit and did not suspect anything. The

allegation that minor grand-daughter of accused Lekh Ram was examined during investigation is not true as parents of the minor girl named Laxmi are reportedly absconding along with the children and proceedings under Section 81 and 82 are initiated against them. Though Sh.Jai Karan, nephew of Lekh Ram produced Laxmi during the vigilance inquiry who made her statement supporting a part of Lekh Ram's statement, but she was found a tutored witness to save her parents and grand-father."

64. The report concluded by stating that A-1 had filed the complaint "to build up his defence. They have found no any substance in his allegation/piece. From autopsy report there is a clear case of murder and there is a pressing dowry demand also."

65. The above report actually bears out the main thrust of the complaint viz., at around 5.30 pm there was a visit by Babloo and Sukhchain to the matrimonial house of the deceased. This could not have been brushed aside as a false plea. The non-examination of these two persons by the prosecution raises grave doubts since they could have provided the vital link in the chain of circumstances. They may have thrown light on the prevailing atmosphere at the matrimonial house of the deceased since this was around the time of her unnatural death. This was in fact the time immediately before her death. The post mortem report shows that the death would have occurred any time between 5:30 pm and 7:30 pm. The prosecution has no answer for this lapse.

66. It is in the above context that the evidence of DW-4 assumes significance. Her cross-examination has been referred to earlier. She appears to have withstood it and has stuck by her version of the events. Her testimony to the effect that she saw Babloo and Sukhchain at the house of

her chacha A-1 at around 5.30 pm introduces a different element into the narrative. This required a deeper investigation by the police.

67. Then we have the other defence witnesses who have shown that Lekh Ram in fact left his house at around 6:30 pm to reach his place of work at Vasant Kunj at 8 pm. It cannot be said that A-1 has made no effort to prove his alibi. The presence of A-2 at the home prior to 8 pm has also not been proved convincingly by the prosecution. The defence evidence and to some extent even the prosecution evidence shows that A-2 probably did not return from the field till 8 pm. He was shown holding the body of the deceased soon after 8 pm as spoken to by PW-10 and PW-11. The Court is not entirely convinced that the prosecution has been able to eliminate the possibility of someone else being present in the house, other than A-1 and A-2, at around the time of death of the deceased.

68. The fact that the deceased was taken to several hospitals does raise some questions about the conduct of A-2. But he appears to have a reasonable explanation why he chose to go to private nursing homes instead of a government hospital.

69. As far as the impugned judgment of the trial Court is concerned, it is seen that there is hardly any discussion of the defence evidence and the impact it has on the case of the prosecution. Also the untrustworthy nature of the evidence of PWs 4 and 7 has been overlooked. Further, the trial Court paid no attention to the alternative charge under Section 302/34 IPC.

70. The result of the above discussion is that the prosecution having failed to

prove beyond reasonable doubt that soon before her death, the deceased was subject to cruelty and harassment by the two accused, they are acquitted of the offences under Sections 498 A and 304 B IPC.

Alternative charge under Section 302 IPC

71. The question that next arises is whether the evidence on record is sufficient to bring home the guilt of the accused for the offence under Section 302/34 IPC? Although the alternate charge for the above offence was framed by the trial Court, the investigation in the present case was not conducted on those lines at all. Further, even the evidence led by the prosecution was only towards proving the main charges under Sections 498 A and 304 B IPC and not for the alternative charge under Section 302/34 IPC.

72. The option of remanding the case to the trial Court for a fresh trial on the alternate charge does not appeal to this Court. In the first place, the incident in question occurred nearly two decades ago. Secondly, the prosecution has not been able to gather evidence to prove the entire chain of circumstances as has been noted hereinbefore. Thirdly, as far as A-2 is concerned, he has already served more than 9 years and 8 months in prison. As far as A-1 is concerned, he was in custody for more than 5 years even on 11th March, 2005. Ultimately, he was granted bail after completing imprisonment of around 6 years on 26th October, 2005. He is stated to be now well over 80 years old. In the circumstances, to send the case back for a fresh trial on the alternate charge would not be in the interests of justice.

73. In *Vijay Pal Singh v. State of Uttarakhand* (2014) 15 SCC 163 the

Supreme Court on the facts of that case had to examine whether the High Court after finding that the accused had murdered the deceased was justified in convicting them only for the offence under Section 304 B IPC. It was observed: “though this case could have been dealt with under Section 302 of IPC, at this distance of time and in view of the lack of evidence on the chain of circumstances, it will not be proper for this Court to proceed under Section 302 of IPC for enhancement of punishment.”

Conclusion

74. The Appellants are acquitted of the offences under Sections 498 A and 304 B IPC. The impugned judgment and order on sentence of the trial court are hereby set aside. The bail bonds and surety bonds of the two Appellants stand discharged. Both Appellants will fulfil the requirements of Section 437A Cr PC to the satisfaction of the trial Court at the earliest.

75. The appeal is accordingly allowed. The trial court record be returned forthwith together with a certified copy of this judgment.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MARCH 23, 2018

‘anb’