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

R-19 & 20

Date of decision: 7th September, 2018

+ **CRL.A. 307/2003**

SONU @ MUNESH @ MAHESH

.....Appellant

Through: Mr Ramesh Gupta, Senior Advocate
with Mr Bharat Sharma, Advocates.

versus

STATE OF DELHI

....Respondent

Through: Mr Kewal Singh Ahuja, APP for the
State

+

CRL.A. 309/2003

SANJEET

.....Appellant

Through: Mr Ramesh Gupta, Senior Advocate
with Mr Bharat Sharma, Advocates.

versus

STATE OF DELHI

....Respondent

Through: Mr Kewal Singh Ahuja, APP for the
State

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE VINOD GOEL**

J U D G M E N T

Dr. S. Muralidhar, J.:

1. These two appeals are directed against the judgment dated 22nd March 2003 passed by the learned Additional Sessions Judge, New Delhi in Sessions Case No. 39/2001 arising out of FIR No. 130/2001 convicting both

Appellants Sanjeet Malik (Accused No.1 – ‘A-1’)) and Sonu @ Munesh @ Mahesh (‘A-2’) for the offences under Sections 498-A, Section 302 and Section 304-B read with Section 34 of the Indian Penal Code (‘IPC’) and the order on sentence dated 31st March 2003 whereby each of the Appellants was sentenced to imprisonment for life along with fine of Rs.50,000/-, and in default payment of fine to further undergo imprisonment for one year for each of the offences punishable under Section 302 IPC and 304-B IPC; and to three years rigorous imprisonment (‘RI’) along with fine of Rs.10,000/- each, and in default of payment of fine to further undergo six months imprisonment for the offence under Section 498-A IPC. The sentences were directed to run concurrently.

2. At the outset it requires to be noticed that as far as A-2 is concerned, by an order dated 31st August, 2005 passed by this Court in Crl. Appeal No.307/2003, the sentences awarded to him were suspended during the pendency of the appeal. As far as A-1 is concerned, by an order dated 29th August, 2007 passed in Crl. Appeal No.309/2007, his sentence was suspended as well.

Charge

3. The charge against the Appellants was that both of them along with their mother Prakash Devi (who remained a proclaimed offender throughout – ‘PO’) subjected the deceased Renu, wife of A-1, to cruelty by demanding dowry between 18th February, 1999 to 31st March, 2001 at their house at Village Masoodpur, New Delhi thereby committing an offence punishable under Section 498-A read with Section 34 IPC; secondly, all of them in

furtherance of their common intention caused the death of the deceased by bodily injuries other than under normal circumstances within seven years of marriage and that she was subjected to cruelty soon before her death in connection with demand of dowry thereby committing the offence punishable under Section 304-B read with Section 34 IPC. The alternative charge under Section 302 read with 34 IPC was also framed against all of them, for having committed the murder of the deceased.

Trial

4. On behalf of the prosecution, 14 witnesses were examined. When the incriminating circumstances were put to the accused, each of them denied them. As far as A-1 is concerned, he stated as under:

“I had an altercation with my wife when I came back from my work place. I had found the child weeping on second floor and my wife was on the first floor washing cloth. She told me that I should go upstairs and she would be coming soon. I went upstairs and try to sooth baby and try to handover him but the baby kept on crying and Renu did not turn up. I again came downstairs and told my wife that she was not paying heed to what I say the child was continuing crying and she was not coming up. I insisted on her coming up leaving the work, she told that child was not going to die by weeping. On this I got enraged and gave her two three slaps and then my wife accompanied me upstairs and sooth the child. Thereafter, when we went to bed, my wife was full of anger. I tried to console her and expressed my sorry-ness for getting enraged. I thereafter went in sleep. After some time, I heard cries of my child, and woke up and saw Renu was not with my bedside. I went upstairs. She was not there also. Then I came to first floor and called her name but nobody replied. Then I found bathroom door closed inside. I bang the door but nobody opened it. I then taped through ventilator and found that she was hanging inside the bathroom. Then I immediately broke open the door and got

untied the rope and got her down.”

5. As far as A-2 is concerned, he stated as under:

“Sanjeet with his wife and child was living separately from us. Sanjeet used to live in new building and we use to live in old house. Sanjeet was living on second floor and we were living at first floor. I am innocent and I have been falsely implicated in this case. I used to visit my material uncle whenever he had more agriculture work and needed a helping hand and used to stay home when there was no work with my material uncle. I also used to take fabrication contracts and used to do job work on orders. My shop and my brother shop was same but our business was different.”

Defence evidence

6. Two defence witnesses were examined. Rattan Lal (DW-1), who was an intermediary in the marriage of A-1 with the deceased on 18th February, 1999, *inter alia* stated that at the time of the marriage, there was no particular settlement about any gifts to be given. When he enquired from the parents of the deceased whenever they visited his jewellery shop, they would tell him that the deceased was living happily (*‘moj mein hai’*). Even the deceased, who used to visit a temple close to DW-1’s shop, had told him that she was ‘living alright’ when he enquired about her well being. When asked whether he knew the cause of the death of the deceased, DW-1 stated that “people were saying that she hanged herself”. He also stated that he had learnt from a lady named Simbal that a quarrel had taken place between the deceased and A-1 over feeding of milk to the child and that when the deceased had refused to do so, A-1 had slapped her. DW-1 stated that he did not go to the PS after learning about the death of the deceased.

7. Bhole Ram (DW-2) was the maternal uncle of A-1 and A-2. He inter alia stated that A-2 was living with him since 1995-96 and worked with him in his fields. According to him, after hearing of the death of the deceased, he and A-2 came to Delhi on a scooter and returned back on the next day.

Case of the prosecution

8. The case of the prosecution was that soon after the marriage between the deceased and A-1 on 18th February, 1999, the deceased started being subjected to cruelty in her matrimonial home. She complained about this to her parents Mahesh Chand Chaudhary (PW-1) and Kaushalya Devi (PW-3). Laxmi Devi (PW-2) is the sister of PW-1 and lived in Gurgaon. According to her, the deceased had come to her house in the last week of May, 2000, when she was in an advanced stage of pregnancy. The deceased disclosed to PW-2 that her mother-in-law and the two accused had beaten her and turned her out of the house. PW-2 then called and informed PW-1, who reached the house of PW-1 from Rajasthan after about 5/6 days. A-1 was then called to the house of PW-2 and counselled by both PW-1 and PW-2 that he should not do such things and should take care of the deceased since she was pregnant, and the deceased was sent back with him thereafter.

Investigation

9. On the fateful day i.e. 31st March, 2001, at around 5.20 pm, information was received which was reduced in writing as DD No.23-A about the death of a lady at her matrimonial home in Masoodpur Village. Sub Inspector (SI) Prabhu Dayal (PW-12) attached to PS Vasant Kunj reached the house along with Constable Vinod Kumar (PW-6). In a room on the first floor of the

house, he found the lady lying on a *charpai* (cot). On making enquiries, he learnt that she had hung herself in the bathroom. PW-12 found the *chunni* (thin cloth worn on head) hanging in the bathroom tied to a pipe and found that this was hardly 4/5 feet above the bathroom floor. According to PW-12, he was of the opinion that such a hanging was not possible and upon learning that it had been only two-two and a half years since the wedding, he then informed the senior officers as well as the Sub-Divisional Magistrate ('SDM'). He also called the crime team to the spot and took photographs from his camera (Ex. PW-12/B-1 to B-12). PW-12, however, handed over the investigation to SI Navat Singh (PW-13) on 1st April, 2000. PW-13 then visited the spot and a site plan was also prepared.

10. On 7th April, 2001, on the basis of secret information PW-13 arrested A-1. He arrested A-2 on 17th April, 2001. As regards Prakash Devi (PO), proceedings under Section 82/83 of the Code of Criminal Procedure ('Cr PC') against her were conducted. An inquest report was prepared by SI P.C. Yadav (PW-8) which is Ex.PW-12/G-1 to G-4. Importantly, this witness admitted that "I did not show chunni to the doctor. The chunni was seized from the spot but not shown by me to the doctor."

Impugned judgment of the trial Court

11. In the impugned judgment dated 22nd March, 2003, the trial Court came to the following conclusions:

- (i) With Dr. Arvind Thergaonkar (PW-5), who conducted the post-mortem on the body of the deceased, having given the opinion that it

was a case of strangulation and homicide and not a case of suicide, this was a clear-cut case of murder.

- (ii) Unfortunately, the ACP and the SHO of the concerned PS closed their eyes and did nothing to investigate the case, despite there being sufficient evidence at the spot to register a case of murder. This was a case of homicide and not suicide. However, neither the SHO nor the ACP took immediate steps to start investigation.
- (iii) The evidence of PWs 1 and 2 was sufficient to bring home the charges under Section 498-A/304-B read with Section 34 IPC.
- (iv) The medical evidence clearly showed that the cause of death was asphyxia following strangulation “possibly caused by ligature mark.”
- (v) It was an undisputed fact that the deceased died a homicidal death. The evidence of PWs 1, 2, 3 and 11 bears out the fact that the in-laws of the deceased were not happy with the dowry she had brought and kept harassing her to bring more money from her parents. The plea that A-2 used to live in his uncle’s house is an afterthought and appeared to have been taken to escape the natural consequences of the act of A-2.
- (vi) The plea of A-1 about having come back from work and thereafter having slapped his wife as she was neglecting the child, and that he was asleep when he heard the loud cries of the child again and then went looking for her has all been disbelieved by the trial Court. The doors of the bathroom were not found broken by SI Prabhu Dayal (PW-12), as was claimed by A-1, who stated that he had broken the door down after peeping into the bathroom and spotting the deceased hanging. It was not possible to accept that this was a case of suicide

because the height of the tap to which the *chunni* was tied was not sufficient for hanging to take place.

- (vii) The offences both under Section 498-A and 304-B IPC were made out against all the accused.
- (viii) The trial Court concluded that both A-1 and A-2 had jointly killed the wife of A-1 and therefore the case under Section 302/34 IPC was made out against them. A further question was whether a person can be convicted for both under Section 302 and 304-B IPC simultaneously. Ultimately the trial Court found that all the charges against the accused stood proved beyond reasonable doubt.

12. The trial Court proceeded to sentence the two Appellants in the manner indicated hereinbefore.

13. This Court has heard the submissions of Mr Ramesh Gupta, learned Senior Counsel appearing for the Appellants and Mr. Kewal Singh Ahuja, learned APP for the State.

14. As far as A-2 is concerned, his presence at the spot is itself doubtful. No witness has spoken about having seen A-2 present at or around the time of the incident. His plea of alibi was backed up by the deposition of DW-2, who remained firm in his cross-examination.

15. This is a case of circumstantial evidence. The law in that regard is fairly well settled. In ***Brajesh Mavi v. The State (2012) 7 SCC 45*** the Supreme Court explained:

“From the several decisions of this court available on the issue the said principles can be summed up by stating that not only the prosecution must prove and establish the incriminating circumstance(s) against the accused beyond all reasonable doubt but the said circumstance(s) must give rise to only one conclusion to the exclusion of all others, namely, that it is accused and nobody else who had committed the crime.”

16. What is not in dispute is the date of marriage being 18th February, 1999 and that the death of the deceased occurred on 31st March, 2001 i.e. within seven years of marriage. This explains why the charge was framed for the offences punishable under Sections 498-A and 304-B IPC. The prosecution first approached the case with the broad premise of the deceased dying an unnatural death and being subjected to harassment and cruelty for bringing dowry. Later, the alternate charge under Section 302 IPC was framed.

Medical evidence

17. One of the critical elements for proving the offence punishable under Section 302 IPC is the medical evidence. Here the deceased died, according to the Appellants, by committing suicide by hanging whereas the case of the prosecution is that she was murdered by both accused.

18. Dr. Arvind Thergaonkar (PW-5) is the doctor who conducted the post-mortem examination, on 1st April, 2001. For some reasons, however, the post-mortem report was signed more than one and a half months later on 17th May, 2001. The opinion in the post-mortem report reads thus:

“The cause of death is asphyxia following strangulation, possibly caused by soft ligature material. All injuries are ante

mortem in nature. I visited the scene of crime along with IO on 16.05.2001. Time since death - around about 42-46 hours.”

19. What is peculiar about this port-mortem report is that although the port-mortem began on 2nd April, 2001 at 10.30 am and concluded at 12 noon on the same day, the port-mortem report was not signed till 17th May, 2001. There is a remark that PW-5 visited the scene of crime along with the Investigating Officer (‘IO’) on 16th May, 2001.

20. The peculiarity does not stop there. More than a month thereafter on 28th June, 2001, pursuant to a written request to him made by the IO, Dr. Arvind Thergaonkar (PW-5) gave a subsequent opinion in which he stated that on the basis of the findings in his own port-mortem report, such findings were “consistent with homicidal – strangulation”.

21. It is important at this stage to carefully peruse the medical evidence because it is central to determine whether the death of the deceased was homicidal or suicidal. It should be recalled that PW-12, the initial IO, was the first police official to reach the spot along with PW-6. He made inquiries and learnt that the deceased had hung herself in the bathroom. Although in the Court he deposed that he found “her chunni in the bathroom... with the bathroom pipe which was hardly 4/5 ft. above the bathroom floor”, in his statement under Section 161 Cr PC, he makes no mention of actually entering the bathroom and seeing its condition.

22. The Court has perused the photographs purportedly taken by PW-12 when he reached the spot. The photographs show that the chunni is tied to

the tap below the geyser which is at some height, but since there is no photograph of the floor of the bathroom, it is not possible from that photograph (Ex. PW-12/B-4) to gauge the height at which the *chunni* is tied. The confrontations of PW-12 in his cross-examination with his previous statement bring out the major improvements made by him on this aspect in his deposition in the Court. They read as under:

“I do not remember the date when my statement was recorded by the IO. I had told IO that the dead body of lady was lying on charpai. Confronted with Ex.PW12/DA where not so recorded. I had told IO that the chunni was found tied with the bathroom pipe, which was hardly 4-5 ft. above the floor of bathroom. Confronted with Ex.PW12/DA where no recorded that height of pipe was 4-5’ from the floor but tying of chunni is recorded there. I had told the IO that husband and his other family members had told me that Renu had hanged herself in the bathroom but after seeing the bathroom and the chunni tying only about 4-5 ft. above the floor and that in my opinion, hanging was not possible. Confronted with Ex.PW12/DA where not so recorded.

I had told IO that I had taken photographs from my camera and gave negatives and positives to IO. Confronted with Ex.PW12/DA where not so recorded.”

23. The IO who took over charge of the investigation from PW-12 i.e. PW-13 admitted that:

“I did not call crime team on the spot because crime team visited the spot prior to investigation handed over to me.”

24. However, no such crime team report has actually been exhibited. PW-13 also admitted to not lifting finger prints from the bathroom which was purportedly the place of occurrence. He also admitted that:

“I did not show chunni to the doctor. The chunni was seized

from the spot, but not shown by me to the doctor.”

25. With the initial opinion given by PW-5 in the port-mortem report being that strangulation by “soft ligature material” was possible, it was important for the IO to have shown the *chunni* to the doctor to ask him whether strangulation was possible by that ligature material. This was a serious lapse in the investigation.

26. Delving further into the port-mortem report, it is seen that the specific observations of PW-5 therein as regards the external examination and ligature mark were as under:

“External Examination:

Injuries No.1. Nail mark abrasions were present on front of the neck parallel to each other size 1 cm x 0.1 cm located 6 cm below the chin.

2. Nail mark abrasions were present on front of neck 1 cm x 0.1 cm transversely placed.

3. Two oval irregular shaped abrasions each 0.5x0.5 cm present on chin parallel to each other.

4. Abrasion on right side of the neck 0.3 x 0.3 cm in size.

Ligature Mark:

Ligature mark is 4 cm long x 1.5 cm wide, transversally placed on front of the neck and slight / oblique at left. It is superficial. It is located 6 cm below the chin and 8 cm above the suprasternal notch. The mid circumference of the neck was 28 cm. The margins of the ligature marks were soft. No ligature material was supplied at the time of post-mortem examination.”

27. The ligature mark was ‘transversally placed on the front of the neck and

slightly oblique at left'. This has some significance in terms of medical literature. One of the characteristics as far as hanging is concerned, is the ligature mark. In **Modi's Jurisprudence**, Chapter-20, Page-510, the differences between hanging and strangulation have been set out in a tabular form. Specific to ligature marks, the differences are noted as under:

<i>"Hanging</i>	<i>Strangulation</i>
6. Ligature mark – Oblique, non-continuous placed high up in the neck between the chin and the larynx, the base of the groove or furrow being hard, yellow and parchment-like.	Ligature mark – Horizontal or transverse continuous, round the neck, low down in the neck below the thyroid, the base of the groove or furrow being soft and reddish."

28. As regards the fracture of the larynx and trachea, those are rare in the case of hanging, but present in the case of strangulation. Scratches on the face and neck are usually not present in hanging, but usually present in the case of strangulation. Added to this is the fact that the port-mortem report did not show the aforementioned fractures. Mr Ramesh Gupta has also produced medical literature which indicates that hanging is possible even from an insufficient height, whereby even if a part of the weight is transferred to the hanging rope or other device, the person may lose his life.

In ***State of Rajasthan v. Ramesh (2015) 17 SCC 673*** it was held:

"Hanging is a form of death, produced by suspending the body with a ligature round the neck, the constricting force being the weight of the body, or a part of the body weight. In other words, the hanging is the ligature compression of the neck by the weight of one's body due to suspension. According to *Modi's Medical Jurisprudence and Toxicology* (23rd Edition), 'Strangulation' is 'the compression of the neck by a force other than hanging. Weight of the body has nothing to do with strangulation. Ligature strangulation is a violent form of death

which results from constricting the neck by means of a ligature or by any other means without suspending the body. When constriction is produced by the pressure of the fingers and palms upon the throat, it is called as throttling. When strangulation is brought about by compressing the throat with a foot, knee, bend of elbow, or some other solid substances, it is known as mugging."

29. In the instant case, the port-mortem report states as under as regards the status of the neck:

"Neck thorax – Soft tissues of neck showed effusion of blood in sub-coetaneous tissues, platysma, sternomastoid and below the ligature marks etc. The soft tissue attachment or thyroid cricoids and hyoid showed effusion of blood and congestion, they were intact. Lungs showed congestion oedema and exude dark colour blood on squeezing, the purl surface showed haemorrhages spot. Heart was normal."

30. It needs to be noticed that the port-mortem report was not finalized by the doctor for more than one a half months after conducting the port-mortem. Further his 'final opinion' was given even later i.e. more than a month after the port-mortem report. There is no satisfactory explanation for these delays. Added to this is his answer in the cross-examination that there was no sign of struggle on any other part of the body other than the nails marks and scratches and the abrasions on the neck. He also clarified that he does not usually visit the spot in all cases and that the visiting of the spot in the present case "was my own decision after I discussed the case with IO..."

31. In this particular case, where the medical evidence is so crucial to decide whether this was a case of homicide or suicide, the case of the prosecution is required to be supported by more categorical and clear medical evidence

than what is available on record.

Errors of the trial Court

32. The trial Court appears to have entered into the realm of conjectures and surmises on certain aspects of medical evidence, of which judicial notice could not have possibly been taken by it. For instance, the trial Court observed:

“One can see that the chunni has been tied to water-tap pipe, which goes to geyser and the distance between floor and water tap could not have been more than 5ft. The ceiling of bathroom itself is always lower and it is- generally at 8.5ft. or 9 ft. The geyser affixed below the ceiling is more than 2ft. long and the pipe going from tap to geyser is more than one ft. long. Distance can easily be seen because of the tiles used in the bathroom and each tile is around 4" wide and a counting of tiles can give actual distance from the floor to the tap. No person can hang himself by tying a chunni with a tap about 5ft. high from the floor. Moreover, report of post mortem Doctor categorically proves it that it was not a case of suicide but it was a case of homicide.”

33. This Court is not able to appreciate the above approach of the trial Court as these are not matters of common knowledge. The above conclusions ought to have been based on expert opinion. This Court also is not able to concur with the conclusion of the trial Court that the port-mortem report ‘categorically proves’ that it was not a case of suicide. For the reasons already explained, it is not possible for the Court to come to such a conclusion.

34. This Court also finds that the trial Court entered into another realm of

conjecture when it observed as under:

“The photographs of deceased show that she was not a weak and frail girl and was a healthy girl. I consider that she was murdered by accused persons collectively. If accused Sanjeet alone had been tightening the noose around her neck, perhaps she would have been able to liberate herself, because, accused Sanjeet, who has been appearing in court, is not a stout man but is a man of ordinary thin structure. It seems that deceased was murdered by two persons, who gave her no chance to liberate herself and her physical force did not suffice herself to liberate herself.”

35. In this regard, it must be noticed that there was no evidence at all to show that A-2 was present at the spot. When PW-12 reached the spot, he only found A-1 present but not A-2. A-2 and his mother were in fact residing on a different floor in the same building. It is also the case of A-2 that he was actually with his maternal uncle (DW-2), and in order to prove the alibi he has examined DW-2, whose deposition has actually not been seriously challenged for any major contradiction. With there being no evidence to show that anyone other than A-1 was in fact present in the house at the time of the incident, for the trial Court to base its conclusion about the guilt of A-2 on the above surmises and conjectures, was a serious error.

36. The trial Court also appears to have made a further serious error by convicting the Appellants under both offences i.e. Section 302 and 304-B IPC on the specious reasoning that “such a course is available, if a person kills his wife, because she has not brought sufficient dowry.” The trial Court overlooked the fact that Section 302 IPC is the ‘alternative’ charge.

37. The settled legal position in this regard has been explained by the

Supreme Court in *Jasvinder Saini v. State (Govt. of NCT of Delhi)* (2013) 7 SCC 256 in the following words:

“13. Be that as it may the common thread running through both the orders is that this Court had in Rajbir's case (supra) directed the addition of a charge under Section 302 Indian Penal Code to every case in which the accused are charged with Section 304-B. That was not, in our opinion, the true purport of the order passed by this Court. The direction was not meant to be followed mechanically and without due regard to the nature of the evidence available in the case. All that this Court meant to say was that in a case where a charge alleging dowry death is framed, a charge under Section 302 can also be framed if the evidence otherwise permits. No other meaning could be deduced from the order of this Court.

It is common ground that a charge under Section 304B Indian Penal Code is not a substitute for a charge of murder punishable under Section 302. As in the case of murder in every case under Section 304B also there is a death involved. The question whether it is murder punishable under Section 302 Indian Penal Code or a dowry death punishable under Section 304B Indian Penal Code depends upon the fact situation and the evidence in the case. If there is evidence whether direct or circumstantial to prima facie support a charge under Section 302 Indian Penal Code the trial Court can and indeed ought to frame a charge of murder punishable under Section 302 Indian Penal Code, which would then be the main charge and not an alternative charge as is erroneously assumed in some quarters. If the main charge of murder is not proved against the accused at the trial, the Court can look into the evidence to determine whether the alternative charge of dowry death punishable under Section 304B is established. The ingredients constituting the two offences are different, thereby demanding appreciation of evidence from the perspective relevant to such ingredients.”

38. In other words, only if the charge under Section 304-B IPC were to fail that the Court can proceed to examine if the charge under Section 302 IPC

would stick and that is why it has been suggested that it should be framed as an alternative charge. It was never intended that a person could be convicted for the offences both under Section 302 as well as 304-B IPC.

39. In the present case, this Court is satisfied that the prosecution has not been able to prove the charge under Section 302 IPC either against A-1 or A-2 and that both of them are entitled to the benefit of doubt as far as this charge is concerned.

Charge under Section 304-B IPC

40. Turning now to the charge under Section 304-B IPC, one of the important ingredients is that soon prior to the death of the deceased, she should have been subjected to cruelty and harassment for the purposes of dowry.

41. Even according to the Appellant (A-1), what happened immediately prior to the death of the deceased was that there was an altercation in which he slapped his wife and she was very angry as a result thereof. He did claim to have apologized to his wife but clearly she was not assuaged. When A-1 woke up after having gone to sleep due to the cries of the child, he found that the deceased had committed suicide in the bathroom.

42. The role of A-2 in all of this is non-existent. The prosecution has not even attempted to lead any evidence in that regard. Clearly therefore, A-2 can by no stretch of imagination be convicted for the offence under Section 304-B IPC.

43. As far as A-1 is concerned, the altercation was not about dowry at all. It was about giving milk to the child who was crying. Therefore, at the highest, it could be said that as a result of A-1 slapping the deceased, she was so mentally disturbed that it led her to commit suicide. The Court considers that on the basis of the evidence that is available on record, the conviction of A-1 for the offence under Section 304-B IPC should be converted to one under Section 306 IPC i.e. abetment to commit suicide.

Offence under Section 498-A IPC

44. That leaves us with the offence punishable under Section 498-A IPC. On this aspect, the evidence of PWs 1 and 3 i.e. the parents of the deceased is clear and consistent. They do not appear to have made any major improvements over their respective statements to the police under Section 161 Cr PC. PW-2 has further corroborated their evidence by confirming that the deceased had come to her house even earlier in May, 2000, after she was treated cruelly by the in-laws for not bringing dowry. Even in this regard, as far as the allegations against A-2 are concerned, they appear to be vague and not very specific.

45. The allegations against A-1 would obviously be on a higher footing. With A-2 not even staying with A-1 and the deceased, but in a separate flat, and in any event taking into consideration the fact that A-2 has led evidence that he was in fact with his maternal uncle (DW-2) most of the time, it cannot be said that there is sufficient evidence to bring home the charge of Section 498-A IPC against A-2. However, the Court is satisfied that the evidence on record is sufficient to bring home the guilt of A-1 for the

offence punishable under Section 498A IPC.

Conclusion

46. The net result of the above discussion is as under:

- (i) A-2 is acquitted of all the offences with which he has been charged and the impugned judgment of conviction and consequent order on sentence qua A-2 is hereby set aside.
- (ii) A-1 is acquitted of the offences under Section 302 IPC. His conviction for the offence under Section 304-B IPC is converted into the conviction for the offence under Section 306 IPC. His conviction for the offence punishable under Section 498-A IPC is affirmed.
- (iii) The appeal filed by A-2 being CrI. Appeal No. 307 of 2003 is hereby allowed.
- (iv) As far as the sentence of A-1 is concerned, for both offences under Section 498-A IPC as well as Section 306 IPC, he is sentenced for each to the period already undergone, with both sentences having run concurrently, including the default sentence for non-payment of fine. CrI. Appeal No. 309 of 2003 filed by A-1 is accordingly disposed of in the above terms.

47. With A-1 having already served out his sentence and with A-2 having been acquitted, the personal bonds and surety bonds furnished by each of them hereby stand discharged.

48. Both the Appellants will fulfil the requirement of Section 437-A Cr PC to the satisfaction of the trial Court at the earliest.

49. The trial Court record be returned together with a certified copy of this judgment.

S. MURALIDHAR, J.

VINOD GOEL J.

SEPTEMBER 07, 2018

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