

\$~R-89 & 90

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 19th July, 2019

+ CRL.A. 765/2002

SOHAN LAL & ORS.

..... Appellants

Through: Mr. K.K. Sud, Sr. Adv. with
Mr. Honey Khanna & Mr.
Sachin Gupta, Advs.

versus

THE STATE OF DELHI

..... Respondent

Through: Mr. Kewal Singh Ahuja, APP
for the State with SI Sheel
Kumar, PS Kalkaji.

+ CRL.A. 782/2002

RAMESH KUMAR

..... Appellant

Through: Mr. K.K. Sud, Sr. Adv. with
Mr. Honey Khanna & Mr.
Sachin Gupta, Advs.

versus

THE STATE OF DELHI

..... Respondent

Through: Mr. Kewal Singh Ahuja, APP
for the State with SI Sheel
Kumar, PS Kalkaji.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT(ORAL)

1. The appellants in these appeals were held guilty and convicted by the additional sessions judge, by judgment dated 18.09.2002, and awarded punishment, by order on sentence dated 23.09.2002. The

appellants had approached this Court by these appeals presented in October, 2002 feeling aggrieved by the judgment dated 18.09.2002 and order on sentence dated 23.09.2002, governing two sessions cases (no. 42/1997 and 41/1997). Since the two cases were inter-connected, evidence having been commonly led, and read, the background facts and the persons involved being also common, they have been heard together for being decided by this common judgment.

2. The background facts leading to the prosecution which culminated in the impugned judgment being passed, to the extent borne out from the indisputable material on record, need to be taken note of at the outset.

3. Lata (deceased) and Geeta (PW-1) were sisters. Their mother Leelawati (PW-16) along with her other children including son Madan Lal (PW-8) were residents at the relevant point of time of house no. 6, Boulevard Road, Tis Hazari, Delhi, which would fall within the jurisdiction of police station Sabzi Mandi. Lata, Geeta and Madan Lal had three more brothers and three other sisters, one of the other brothers, Brij Lal (PW-2), also being a witness on whose testimony the prosecution rested its case. The family also included Dayawati (PW-15), wife of Madan Lal, and Meenakshi (PW-9), wife of Brij Lal, though it may be added that the said other brother was a resident of another property. Lata, it may be noted here was the elder one, she having studied upto seventh standard, Geeta, the junior sibling having gone to school upto ninth standard.

4. Both the said sisters i.e. Lata (deceased) and Geeta (PW-1) were married on 24.11.1987 as per Hindu rites and customs to two brothers,

they being appellants Ramesh Kumar (A-4) and Suresh Kumar (A-3), the former being elder to the latter. After marriage on 24.11.1987, Lata and Geeta had moved to live with their respective husbands in the matrimonial home, the said place having been described as house no. 176/6, DDA flats, Kalkaji, New Delhi. Both appellant Ramesh Kumar (A-4) and appellant Suresh Kumar (A-3) were employees at that point of time, in positions of peon, in Guru Tegh Bahadur Hospital (GTB Hospital) and Hindustan Aeronautics Ltd. (HAL) respectively. The family of the husbands i.e. appellants Ramesh Kumar and Suresh Kumar also comprised besides others, their parents i.e. Sohan Lal (A-1) and appellant Yashoda Devi (A-2). It has come in the evidence that the matrimonial home was originally a one room flat over which certain construction had been made upto the level of third floor, the bed rooms used by the said appellants, and their respective wives, being on the upper floor. The above-mentioned appellants have a sister Beena Devi, who was married at the relevant point of time and was living with her family, though the evidence would also indicate that her matrimonial home was located in close vicinity.

5. On 27.04.1988, Lata was taken in a critical condition to Safdarjung Hospital, New Delhi, at about 5.25 p.m., by her mother-in-law Yashoda (A-2). The medico-legal certificate (MLC) recorded in the casualty of the said hospital is part of the material on record (Page 41 in part 2 of the trial court record). The document has been referred to for purposes of collection of the relevant facts though it was not formally proved at the trial. It is noted that Lata was taken to the hospital with history of alleged ingestion of *baygon* spray. Though

there are certain documents on the file of the trial court, including certain daily diary entries and medical notings, the same not having been formally proved by any witness, the fact remains, and there is no challenge to this, that Lata remained unfit for statement till she succumbed to death on 03.05.1988.

6. Concededly, the members of the parental family of Lata and Geeta, including Geeta (PW-1) herself, were present in the hospital keeping a watch over her medical condition and treatment, at least since 28.04.1988 when the intimation about the event had been conveyed to them. Concededly again, no report to the police was lodged by any member of the parental family till 03.05.1988.

7. On 03.05.1988, first information report (FIR) no. 120/1988 was registered by police station Kalkaji on the basis of statement (Ex.PW-1/A) of Geeta (PW-1) bearing the endorsement of Sub-Inspector Desh Pal, who it so appears, was the police official entrusted with the preliminary inquiries. SI Desh Pal, it has been submitted, was the investigating officer, who took up various steps for the probe but he died before he could be called to the witness box. Consequently, the prosecution was deprived of the benefit of his testimony. It may be noted that no endeavour was made by the prosecution to bring in any other witness to prove the documents which may have been prepared during the course of inquiry or investigation by SI Desh Pal. The copy of the FIR no. 120/1988 (Ex.PW-7/A) proved by ASI Mam Chand (PW-7) would reveal that the case was investigated from the perspective of alleged commission of offences punishable under Sections 498A/302/34 of Indian Penal Code, 1860 (IPC).

8. It may be mentioned here that as per the allegations of Geeta (PW-1), the first informant, aside from the ill-treatment meted out to her and Lata by the appellants and other members of the matrimonial family, after the marriage, on account of dis-satisfaction with dowry, there had been a quarrel between Lata (deceased) on one hand and the appellant Ramesh Kumar on the other hand, in the forenoon of 27.04.1988, this after the two sisters had been taken by him, i.e. appellant Ramesh Kumar (A-4), to a municipal medical centre at Kalkaji (for check up in the context of their respective pregnancies), the quarrel having taken place on the top terrace in the course of which appellant Ramesh Kumar (A-4) had suffered some injury on his forehead which was explained to Geeta (PW-1), by Lata (deceased), as being a self-inflicted injury using an axe. After dust had settled on the said quarrel, the said two women and Ramesh Kumar (A-4) having taken lunch, the former two had gone to sleep, the attention of Geeta (PW-1) having been drawn on noise of some hiccups, it being revealed that Lata was in critical state. It was alleged by Geeta (PW-1) in the FIR, that Lata (deceased) had told her at that point of time that she had been forcibly administered "*baygon*" (pesticide).

9. There is ample evidence available on record, and it is admitted case on all sides, that Lata died on 03.05.1988 on account of poisoning due to ingestion of *baygon* (pesticide). This is the medical opinion given in the autopsy report, as was proved during the trial by Dr. S.K. Verma (PW-4) and by Dr. A. Sharma (PW-10), both of whom with another medical officer (Dr.B. Swain) were members of the board, which had been constituted for such purposes. The autopsy doctors

opined that Lata had suffered poisoning on account of carbamate which confirms the consumption of *baygon* (pesticide) which contains such poisonous substance.

10. The investigating agency, however, seemingly was not satisfied with the allegations of it being a case of forcible administration of poisonous substance. The report (charge-sheet) under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) dated 27.07.1988, sought prosecution for the offences indicated in the FIR (inclusive of offence under Section 302 IPC) but failed to present any concrete evidence in this regard in support. It is against this backdrop that the sessions case (no. 42/1997) arising out of the said charge-sheet in the FIR 120/1988 resulted in trial being held on the charge for offences under Sections 498A/304 B IPC.

11. The case was also directed, besides four afore-mentioned appellants, against Beena Devi (A-5), she being married sister of the husband of the deceased (Lata.) Essentially, Geeta (PW-1) was the prime witness of the prosecution, her version based on her experience of life in the matrimonial home, which was common to her and to her deceased sister, being the main stay, her evidence sought to be corroborated by the evidence of her mother (PW-16), her brothers (PW-2 and PW-8), and the wives of the said brothers (PW-9 and PW-15).

12. The evidence clearly shows that Geeta (PW-1) had left the matrimonial home at least from 28.04.1988. There are some claims given that after Lata had been taken to hospital in the critical condition post-poisoning, Geeta had moved away from the matrimonial home,

and the society of her husband Suresh Kumar (A-3), from 27.04.1988 itself, the contrary version being that she had stayed overnight in the matrimonial home, her shift from the matrimonial home being an event that had followed on the next day. Be that as it may, Geeta admittedly started living with the family of her brother Madan Lal (PW-8) at least from the next day onwards.

13. While the afore-mentioned case arising out of FIR no. 120/1988 was pending in the Court, Geeta (PW-1) lodged a formal complaint (Ex.PW-1/A) dated 04.05.1990 with Deputy Commissioner of Police (DCP) Anti Dowry Cell, levelling allegations about cruelty meted out by her husband appellant Suresh Kumar (A-3) and his parents i.e. the mother Yashoda (A-2) and father Sohan Lal (A-1). The said complaint dated 04.05.1990 eventually resulted in a recommendation being sent on 21.05.1990 by DCP Crime (Women Cell) to DCP (North) on the basis of which the other case i.e. first information report no. 130/1990 was registered by police station Sabzi Mandi and taken up for investigation into offence under Section 406 IPC, the focus apparently being on non-return of her *stridhan* inspite of demand by PW-1.

14. The investigation into the second FIR (no. 130/1990) was concluded and it resulted in charge-sheet being presented on 30.09.1990 for trial of appellant Suresh Kumar (A-3) and his parents Sohan Lal and Yashoda Devi (A-1 and A-2) for offences under Sections 406/498A IPC, since the said offences were triable by the court of Metropolitan Magistrate, after cognizance had been taken, the case continued to be proceeded with by the said court. Later, it having been brought to the notice of the Court that the two cases had a

bearing on each other, the said case was also committed to the court of Sessions and was brought before the same Court where the first case involving alleged dowry death of Lata was pending. Upon committal, the second case was registered as sessions case no. 41/1997. With consent of both sides, the two cases were clubbed with each other and tried together, the evidence in one to be read as evidence in the other. For purposes of completion, however, Geeta (PW-1) and certain others were called (or recalled) and the evidence concerning the second case was also taken on board.

15. Against this backdrop, the cases were put on trial by presentation of evidence through eighteen witnesses. They would include Geeta (PW-1), sister of the deceased; Brij Lal (PW-2), brother of the deceased; SI Divender Singh (PW-3), the investigating officer who had visited the place of occurrence on 10.06.88 and prepared site plan; Dr. S.K. Verma (PW-4) who had prepared post-mortem examination report; Constable Bijender Singh (PW-5), who had taken sealed pullandas to office of CFSL and deposited the same; HC Yashpal Singh (PW-6), conducted post-mortem examination; ASI Man Chal (PW-7) who had recorded formal FIR; Madan Lal (PW-8), brother of the deceased; Meenakshi (PW-9), sister-in-law (wife of Brij Lal); Dr. A. Sharma (PW-10), who had conducted the post-mortem examination on the body of the deceased; Dr. Rajesh Chauhan (PW-11), who had given opinion that deceased was unfit for statement; ASI Rajinder Surya (PW-12), the MHC (M) witness to handing over of a sealed pullandas containing viscera; Dr. K.K. Arora (PW-13), who had given opinion about presence of carbamate in viscera; Govind

Singh (PW-14), who had identified the writing of doctor who prepared certain documents; Dayawati (PW-15), wife of Madan Lal, sister-in-law of deceased; Leelawati (PW-16), mother of the deceased; Dalip Singh Chauhan (PW-17), Head Clerk of GTB Hospital; and, Inspector Rajbir Sharma (PW-18), Investigating Officer (IO) of FIR no. 130/1990.

16. The appellants, and co-accused Beena (A-5), were examined under Section 313 Cr.P.C., in the course of which they denied the evidence incriminating them, concerning ill-treatment allegedly meted out to Lata and Geeta. The appellants, and Beena (A-5), claimed to be innocent and falsely implicated.

17. The defence examined two witnesses viz. S. Ganeshan (DW-1) and H.P. Singh (DW-2), the evidence of first concerning his employment with HAL, attendance of duties by him on certain dates including 27.04.1988 and the second concerning employment of appellant Sohan Lal (A-1) with a private entity Mohan Machines, the evidence also meant to prove his other engagements on the relevant date.

18. The trial court, by common judgment, disbelieved the theory of ingestion of *baygon* (pesticide) by Lata to be under compulsion or force. There was no charge framed for offence of culpable homicide. It is clear from bare perusal of the judgment of the trial court that it proceeded on the assumption that it is a case of self-ingestion of carbamate (*baygon*) by Lata and, therefore, a case of suicide. The evidence of Geeta (PW-1) has been supported by members of her parental family, as to certain acts of commission or omission

constituting cruelty for dowry. This was accepted by the trial court to be worthy of reliance insofar as the case is directed against Ramesh Kumar (A-4). Applying the presumption under Section 113-B of Indian Evidence Act, 1872, appellant Ramesh Kumar (A-4) was held guilty on charge for offence under Section 304 B IPC. The trial court, however, was not impressed with the said charge against others who were thus acquitted on that score. At the same time, the trial Judge found the appellants Sohan Lal (A-1) and Yashoda Devi (A-2) and Suresh Kumar (A-3) and Ramesh Kumar (A-4) guilty of having subjected Lata (deceased) and Geeta (PW-1) for dowry and, therefore, convicted them on the charge for offence under Section 498A IPC. Benefit of doubts were given to Beena Devi (A-5), the married sister of Suresh Kumar (A-3) and Ramesh Kumar (A-4), she, thus, being let off, the result being acquittal in her case.

19. Having concluded as above, in the case arising out of FIR no. 120/1988, the trial Judge proceeded to acquit appellants Suresh Kumar (A-3), Yashoda Devi (A-2) and Sohan Lal (A-1) in the second case, the charge under Section 406 IPC, which was additional to the charge in the first case having thus, failed to impress.

20. By subsequent order dated 23.09.2002, appellant Ramesh Kumar (A-4) was awarded rigorous imprisonment for seven years with fine of Rs. 2500/- and in default to undergo rigorous imprisonment for three months under Section 304 B IPC. He was also awarded rigorous imprisonment for three months with fine of Rs. 2500/- for offence under Section 498A IPC. The other three convicts viz. Sohan Lal (A-1), Yashoda Devi (A-2) and Suresh Kumar (A-3)

were sentenced to rigorous imprisonment for three years with fine of Rs, 5,000/- in default for three months each for offence under Section 498 A IPC.

21. The first captioned appeal (Crl. Appeal No. 765/2002) was presented by Sohan Lal (A-1), Yashoda Devi (A-2) and Suresh Kumar (A-3). The second captioned appeal (Crl. Appeal No. 782/2002) was presented by appellant Ramesh Kumar (A-4). Sentences against all the said four appellants were suspended and they were enlarged on bail pending hearing on these appeals by different orders. The turn of these appeals for final hearing and adjudication has come up seventeen years thereafter. During the interregnum, appellant Sohan Lal (A-1) died on 28.01.2013. The fact of his death was brought on record. It having been verified, the proceedings against him were found, by order dated 19.03.2019, to have abated.

22. The appeals thus survive for consideration qua the case of the prosecution against appellants Yashoda Devi (A-2), Suresh Kumar (A-3) and Ramesh Kumar (A-4). Concededly, acquittal of the said two persons on the charge for offence under Section 304 B IPC and Section 498A IPC, and acquittal on all charges of Beena Devi (A-5), has not been challenged by the State, the said result of the prosecution having attained finality.

23. As observed earlier, there is ample evidence on record to show that Lata died as a result of poisonous substance (ingestion of *Baygon*). The prosecution does not refute that it is not a case where the allegations of acts of commission or omission constituting culpable homicide would have any legs to stand on. The evidence of Geeta

(PW-1), the solitary person on whose word the case to that extent was set up in the FIR, is not believable *per se*. There is ample evidence on record including admissions of Geeta (PW-1) that other than she (PW-1), Lata (deceased) and appellant Ramesh Kumar (A-4) all other members of the family were not even at home at the relevant point of time, they being away on some or other work. It may be mentioned here that it is admitted that Suresh Kumar (A-3) and Sohan Lal (A-1) were on duty at their respective places during the day of 27.04.1988. Geeta (PW-1) has herself conceded during her deposition that her mother-in-law appellant Yashoda Devi (A-2) was also working for gain, she earning her livelihood by ironing clothes of nearby households, she being on some such errand outside the house in that context during the relevant period.

24. As noted earlier, both Lata and Geeta were pregnant with children at the relevant point of time, the pregnancies having been assessed to be four or five months' old. Geeta (PW-1) has gone on record to admit during her deposition that she was taken along, with other sister Lata, on a number of occasions for medical check-up of pregnancy. It is conceded that appellant Ramesh Kumar (A-4) had taken both the said women to a municipal medical centre for such purposes during the day on 27.04.1988. After the said medical check-up when the three of them had returned, there was no one else at home. It is after the return that Ramesh Kumar (A-4) and Lata (deceased) had gone to the top terrace where the couple had had fight over some issue. The subject matter of the said fight is a matter of interest to this prosecution and the facts in such regard would be seen

a little later. The fact, however, remains that Ramesh Kumar (A-4) suffered some injury in the forehead during the said fight with his wife Lata, the couple having eventually come down to their bed room where Geeta (PW-1) met them. When the three of them had taken lunch, Geeta seems to have gone to take a rest in the afternoon. Geeta concededly is not witness to any incident wherein she may have seen Lata being force-fed with *Baygon* (pesticide). She attributed information about forcible ingestion to Lata but then used the expression in plural (“*in logon ne mujhe jabardasti baygon pila diya hai*”) seemingly to rope in all members of the matrimonial family. The trial Judge has chosen to ignore the use of plural expression. In the opinion of this Court, this may not be a fair reading of the material on record. The fact remains Geeta (PW-1) attributed forcible administration of poisonous substance to all the members of the matrimonial family, this clearly being impossible on account of the sequence of events wherein such other members of the family, excluding Ramesh Kumar (A-4), were not even present at home.

25. From the above facts and circumstances, the only safe conclusion that can be drawn is that Lata had consumed *baygon* powder (poisonous substance) voluntarily and on her own, this having led to her death, such death in this view of the matter being nothing but a case of suicide.

26. Since the prosecution pressed charge for offences under Sections 304 B and 498 A IPC, the sole point for determination is as to whether Lata, and of course, Geeta (PW-1) were subjected to ill-treatment in the matrimonial home by the appellants, and other

members of their family, on account of dis-satisfaction with their expectation or demands for dowry or precious gifts. The trial Judge has answered this issue in the affirmative. It is the duty of this Court to examine as to whether such conclusions are borne out from the evidence of the crucial witnesses namely Geeta (PW-1), Brij Lal (PW-2), Madan Lal (PW-8), Meenakshi (PW-9), Dayawati (PW-15) and Leelawati (PW-16).

27. As mentioned earlier, Lata (deceased) and Geeta (PW-1) were married to appellants Ramesh Kumar and Suresh Kumar on 24.11.1987. They remained under the same roof in the matrimonial home with the appellants and members of their family at least till 27.04.1988, which would make it roughly a period of five months. Though Geeta at one stage claimed that there were certain restrictions on visits by her and Lata to the parental home and similar restrictions against their parental family members to visit them in the matrimonial home, this cannot be accepted in view of her own deposition indicating several visits to the parental family, such visits, as spoken by the afore-mentioned witnesses, including a stay of a few days about one week after the marriage, stay for a prolong period in February-March, 1988 around the period of Holi festival, attributed admittedly to certain customs, particularly during the period when Suresh Kumar (A-3), husband of Geeta (PW-1) was away to Bangalore on official duty such period being indicated to be (at one stage) for almost four weeks and a stay of more than a month sometime in January, 1988, the last being attributed to one at the instance of Madan Lal (PW-8) explained as his response to the

episodes of ill-treatment brought to his notice, the claim also being that the girls were taken back after some assurance that they would be taken care of properly in future. There are also admissions of certain social visits by Lata and Geeta to their kith and kin including Madan Lal and Meenakshi on account of their surgeries, they concededly being accompanied by their respective husbands, this in addition to suggestions given about the parties having attended certain function in Seelampur about eight/nine days prior to the day Lata consumed poisonous substance to commit suicide.

28. Further, it may be noted that defence has brought on record, and she admitted, that Geeta (PW-1) had written a letter (Ex.PW-1/DE) to Suresh Kumar (A-3), which was an expression full of love and affection towards him, conveying her apology for certain behavior which had annoyed him, and over which she was remorseful. Indeed, there is no date to which this letter (Ex. PW-1/DE) can be assumed to pertain. For all one knows, this may have been written several weeks or months prior to the crucial date i.e.27.04.1988. But then, converse possibility is true also and cannot be ruled out. Geeta only could have clarified but she would not throw much light on the timeline in its relation.

29. Aside from the evidence of afore-mentioned witnesses, the prosecution also relied upon a letter (Ex.PW-1/B), which is described as one written by Lata (deceased) on or about 23.04.1988, that being the date on which, as per Geeta (PW-1), the said letter was handed over by Lata (deceased) to her brother Madan Lal (PW-8) who was visiting their matrimonial home at the time. This letter does bear the

said date with name and address of PW-8 indicated on the reverse. The letter appears to have been written on a page taken out from the exercise book. It is seemingly addressed to the brother (the opening word being “*bhaiya*”) and closed with expression meant to convey that it was a communication from both the sisters, Lata and Geeta. Geeta (PW-1) affirmed that this was a letter written by Lata, her brother Madan Lal joining her in this regard, also claiming that this letter had come in his hand on 23.04.1988.

30. Admittedly, the investigating agency did not test the authenticity of the authorship. Neither specimen of hand-writing or signatures were gathered nor opinion of any handwriting expert solicited on basis of any admitted material. The trial Judge accepted the prosecution case that this letter was in the hand of Geeta (PW-1), it having come in the possession of Madan Lal (PW-8) on 23.04.1988.

31. Allegations in the FIR based on statement (Ex.PW-1/A) were that after the marriage of the appellants, Beena (A-5) used to taunt the two women, expressing grievance that fridge, television and tape recorder were not given in the marriage and, therefore, they were not entitled to use such equipments in the matrimonial home. It was alleged that on this score, Geeta and Lata had been beaten up on earlier occasions and an information to that effect had been conveyed to the brother Madan Lal (PW-8) even telephonically. The first informant referred to the grievances having been conveyed even by Lata seemingly referring to the letter (Ex.PW-1/B), also stating that she and Lata were not allowed to meet their brothers and mother.

32. In the letter (Ex.PW-1/B) described as the one written on 23.04.1988, Lata is said to have expressed her grievances in further detail. She would say that though her brother (PW-8) had given dowry beyond his capacity, the parents-in-law were not satisfied and would often give taunts about radio, T.V. and fridge not having been gifted. She expressed grievance that the mother-in-law would provoke her sons (the husbands) to get them beaten up and level false allegations of theft refusing to let her and Geeta go to parental home and not allow anyone from the parents family to come to the matrimonial home. She statedly added that the matrimonial family was such that they would never be satisfied even if they were given the entire house. She stated that she was unable to bear this harassment further and wondered as to how he (the brother) would bear her expenses. She purportedly concluded by stating she and Geeta were not allowed to speak to the neighbours and would remain confined at home even though the neighbours were good persons. She sought intervention of the brother expressing regret that he was being so bothered.

33. The evidence of PW-2, PW-8, PW-9, PW-15 and PW-16 leaves a clear impression that the said persons were not directly privy to any episode of ill-treatment of Geeta (PW-1) or Lata (deceased) in the matrimonial home. Their version about the cruelty meted out to Geeta and Lata is essentially based on what may have been communicated to them by the two women at the time of either their visit(s) to the parental home or the visits of Madan Lal to their matrimonial home.

No witness other than Madan Lal (PW-8) has spoken of any visit to the matrimonial home.

34. In *Mohd. Iqbal M. Shaikh v. State of Maharashtra*, (1998) 4 SCC 494, it was observed thus :

“19. We are quite aware of the principle that in a country like India where it is difficult to find a witness who has not made any embellishment or exaggeration, and therefore, in such case court would be justified in separating the chaff from the grain and then act upon the grain. But where the evidence consists of only chaff as in the present case, the question of separating the chaff from the grain would not arise. Then again when all the eyewitnesses suffer from the same infirmities as has been discussed by us, the question of one corroborating the other would not arise. If a witness is partly reliable and partly unreliable then one may look for corroboration to the reliable part of the ocular version of a witness. But if a witness is wholly unreliable as has been assessed by us, the question of corroboration does not arise...”

35. In *State of Rajasthan v. Babu Meena*, (2013) 4 SCC 206, the Supreme Court held that :

“9. ... It has often been said that oral testimony can be classified into three categories, namely, (i) wholly reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable. In case of wholly reliable testimony of a single witness, the conviction can be founded without corroboration. This principle applies with greater vigour in case the nature of offence is such that it is committed in seclusion. In case prosecution is based on wholly unreliable testimony of a single witness, the court has no option than to acquit the accused.”

36. In the present case, the prosecution case essentially rests on the credibility of the account given by Geeta (PW-1). In the opinion of this court, Geeta (PW1) turns out to be a witness who falls in the category of wholly unreliable, it being highly unsafe to find the appellants guilty on her word. Her version may be a heady mixture of truth, half truth and tissue of lines, it being virtually impossible to decipher as to what extent she can be believed. The reasons may be set out hereinafter.

37. As was pointed out by the learned senior counsel for the petitioners, carbamate is a poisonous substance which has a foul and obnoxious taste, the very presence being repulsive, it being highly improbable that the same can be force-fed to a human being of such age and maturity as Lata was. The intended recipient of such compulsion would expectedly put up fierce resistance. The chronology of events of the afternoon of 27.04.1988 rule out the possibility of such force-feeding of *baygon* powder having been even attempted. Forcible administration of the poison would have resulted in some commotion. Geeta (PW1) was present. She does not claim having heard anything of this kind. On the contrary, after the deceased and her husband had come down from the terrace (where they had had a fight), the three of them took lunch and went to bed to take some rest. It is during sleep that Geeta heard her sister, lying next to her in the same bed, giving sounds of hiccups, the enquiry revealing poisoning. The MLC did not denote any external injuries. The theory of forcible administration failed even during investigation. When Lata was taken in critical condition to the hospital, she would have been

unable to speak or converse. It is inconceivable that she would tell Geeta earlier that she was administered poison that too by all the accused collectively.

38. The endeavour to rope in all the accused persons into the accusation of forcible administration of poisonous substance to Lata was clearly an effort to fabricate facts. It has been brought out during trial that no accused other than Ramesh Kumar (A-4) was even present or around at the crucial point of time. The allegation leveled by Geeta attributed, of course, to what she claimed to have been told by Lata about the other accused being involved smacks of an ulterior motive to falsely frame the in-laws, which tells poorly on her credibility.

39. Geeta (PW1) has spoken falsely on other aspects as well. She had alleged in the FIR and in her statements during investigation that she and Lata were not allowed visits to the parental home and similarly, as per the diktat of the mother-in-law, the appellant Yashoda Devi, members from the parental family were also not welcome to the house of the accused. These allegations were apparently false because she has admitted to numerous visits to, and even prolonged stay by her and Lata in, the parental home, her evidence and that of her brother Madan Lal (PW8) also showing visits of the latter (PW-8) to the matrimonial home. Reference to this has been made elaborately in the earlier part of this judgment and the same does not call for repetition.

40. Geeta (PW-1) had also alleged during investigation that she and Lata were not even allowed telephonic contact with the parental family. There is inherent contradiction in her version in this regard because she would also claim that the brother had been informed

about the harassment even on telephone. She has not spoken of any telephone facility in the matrimonial home. She was not even aware if a telephone facility was available in the neighbourhood. Going by her account, she and Lata were not allowed to talk even to the neighbours. In this scenario, one wonders as to how they would communicate with the brother telephonically to lodge the complaint about ill-treatment.

41. The facts and circumstances which come out clearly rather militate against the possibility of Lata and Geeta suffering torture of the kind being projected, what with both pregnant with children and the family concededly taking care of their needs and health, the appellant Ramesh even accompanying them to the hospital for such purposes. The fact that there was harmony in relations is confirmed by the social visits at the time of surgeries of the brother and his wife not only by Lata and Geeta but also by their husbands as indeed participation in social functions. This is also reinforced by the letter (Ex. PW1/DE) admittedly written by Geeta (PW1) to her husband Suresh Kumar (A-3), a communication by a wife who was doting on her husband not the least a wife who was being harassed and tortured.

42. The prompt reporting of a crime is one of the safeguards the courts insist on. The courts look out for assurance as to the credibility of the charge brought to trial. This is a check against fabrication of allegations and evidence. Spontaneity in reporting the crime reduces the possibility of coloured version being created, after deliberation and by way of an after-thought, being presented. In *State of A.P. vs. M. Madhusudan Rao*, (2008) 15 SCC 582, it was held thus :-

“30. Time and again, the object and importance of prompt lodging of the first information report has been highlighted. Delay in lodging the first information report, more often than not, results in embellishment and exaggeration, which is a creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of a coloured version, an exaggerated account of the incident or a concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity. Therefore, it is essential that the delay in lodging the report should be satisfactorily explained.”

43. The delay in reporting of a crime puts the criminal courts on guard. This necessarily leads to a search for explanation for the delay, particularly if the delay is inordinate or such as may have created the possibility of fictional story being reported. It is in this context that both Geeta (PW1), and her brother Madan Lal (PW8), miserably fail.

44. If Geeta's version based on her own experience in the matrimonial home were correct, serious crimes had been committed against her, and Lata, during the period of about five months after marriage. Lata had been subjected to forcible administration of poison rendering it a case of attempted homicide. She had come in contact with her parental family atleast on the day next to the one when Lata had been taken to the hospital. Thereafter, in natural course of events she would be expected to have shared the entire information with her kin, particularly the brother Madan Lal (PW-8), who is perceived to be concerned about their welfare. As per the version of both, Lata's letter (Ex. PW1/B) had come in the hand of PW8 on 23.04.1988. One of his

sisters was virtually on death bed. The other sister had come back home after prolonged torture and harassment for dowry. In this scenario, he would be too anxious and eager to bring the culprits to book. It is admitted both by PW-1 and PW8 that police had met them in the hospital several times during the period of hospitalization. Yet, no report was lodged nor any complaint made, Geeta (PW1) instead stating at trial that police had been told by them that they would not make any statement till Lata had regained consciousness.

45. Neither allegations of forcible administration of poisonous substance nor the existence of letter (Ex. PW1/B) were brought to light till 03.05.1988, after Lata had died. The delay has remained unexplained. Rather, the failure to report is sought to be justified by reasons which do not appeal to conscience. As noted earlier, there is no evidence gathered to confirm the authenticity of the authorship of the letter (Ex. PW1/B) attributed to Lata. In these circumstances, that part of the material also loses its evidentiary value.

46. There is not the least doubt in the view of this court that there was more to the story than meets the eye. In the afternoon of 27.04.1988, only three persons were present at home, they being Lata (deceased), Geeta (PW1) and the appellant Ramesh Kumar (A-4). Lata has died. A-4 faced the trial as the accused. Geeta (PW1) has narrated the sequence of events particularly covering the time when the three of them had returned from the medical centre till the critical condition of Lata came to light necessitating she to be taken to hospital. During this period, Geeta (PW1) herself reveals, Lata (deceased) and her husband Ramesh Kumar (A-4) had gone up to the

top terrace where they had a quarrel. Conspicuously, Geeta would not elaborate on the cause of the quarrel. The quarrel between husband and wife apparently was over some serious issue, this for the reason the husband (A-4) returned in its wake with a self-inflicted injury on his head. Apparently, passions had run so high that he had lost self-control. In such fact-situation, it is not acceptable that Geeta (PW-1) would not know the cause of the quarrel. She was so close to her sister Lata, both of them having together entered the house of the accused persons as brides, the bond between them being so strong that they would visit the parental family together and even sleep for rest in the same bed. In these circumstances, the ignorance shown by Geeta as to the cause for quarrel does not inspire confidence.

47. In contrast, the plea of the defence has been that Lata had come to be involved in some measure with a person named Om Prakash Bengali. Reference has been made to telephonic calls being received by Lata from such person to which her husband Ramesh Kumar (A-4) would take exception. Though no formal evidence has been adduced to prove these facts, the defence rests its arguments on the admission of the prosecution witnesses about existence of the person named Om Prakash Bengali, he being connected to the parental family. This court does not give much credence to the theory of their possibly having been some illicit liaison between the said person and Lata (deceased) but the possibility that the appellant Ramesh Kumar (A-4) was perturbed over contact of the said person with his wife cannot be wholly ruled out.

48. The chronology of events unmistakably shows that Lata was living in the matrimonial home being taken care of in her pregnancy by her husband who would accompany her to the medical centre for such purposes. There was no report or complaint of any ill-treatment or torture in the matrimonial home till after her death. The facts proved show that Lata committed suicide by voluntarily consuming the poisonous substance. The fact that this event occurred immediately after the fight with the husband on the top terrace supports the theory that the cause of suicide may be attributable to the cause of the said quarrel rather than the ill-treatment on account of dowry, the allegations in which regard were made highly belatedly.

49. On the foregoing facts, and in the circumstances, this court finds it difficult to uphold the conviction of the appellants. The prosecution has not been able to prove its case beyond all shadow of doubts. The benefit of this will have to be extended to the appellants.

50. In the result, the impugned judgment and order on sentence are set aside. The appellants are acquitted.

51. The appeals are disposed of in above terms.

R.K.GAUBA, J.

JULY 19, 2019

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