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

+ CRL.A. 606/2018

SANDEEP @ SUNNY @ ROHIT & ANR. Appellants
Through Mohd. Ahmed with Mr.Amit Vohra,
Advocates.

versus

THE STATE (GOVT OF NCT OF DELHI) Respondent
Through Ms.Aashaa Tiwari, APP for the State
with SI Sumit, PS Aman Vihar.

AND

+ CRL.L.P. 260/2018

STATE (GOVT. OF NCT OF DELHI) Petitioner
Through Ms.Aashaa Tiwari, APP for the State
with SI Sumit, PS Aman Vihar.

versus

SANDEEP @ SUNNY @ ROHIT & ANR. Respondents
Through Mohd. Ahmed with Mr.Amit Vohra,
Advocates.

Reserved on : 11th October, 2019

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Date of Decision: 24th October, 2019

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

J U D G M E N T

MANMOHAN, J:

1. While Crl.A.606/2018 has been filed by appellant-convict Sandeep @ Sunny @ Rohit (husband of the deceased) and appellant-convict Deepak (brother-in-law of the deceased) challenging the judgment dated 31st January, 2018 passed by the Additional Sessions Judge-04, North-West

District, Rohini Courts, Delhi in Case No.52035/2016 arising out of FIR No.6/2011 registered with Police Station Aman Vihar convicting them under Sections 304B/34 IPC and sentencing them to rigorous imprisonment for ten years with fine of Rs. 15,000/- , as well as under Sections 498A/34 IPC for which they were sentenced to rigorous imprisonment for three years with fine of Rs. 5,000/-; Crl. L.P. 260/2018 has been filed by the State, against the same judgment challenging the acquittal of the appellant-convicts under Section 302 IPC.

CASE OF THE PROSECUTION

2. The case of the prosecution in brief is that appellant-convict Sandeep had married Anju (deceased) on 13th December 2010 and that on 10th January 2011 i.e. within a month of her marriage, she was found dead at her matrimonial home. The FIR bearing No. 6/2011 under Sections 302, 304B and 34 of the IPC was registered with Police Station Aman Vihar. After the investigation, the appellant-convicts were arrested on 5th April, 2013 and a charge sheet under Sections 302, 304B, 498A and 34 of the IPC was filed against them.

FINDING OF THE TRIAL COURT

3. The Trial Court convicted the appellant-convicts under Section 304B IPC relying upon Sections 106 and 113B Indian Evidence Act, 1872. However, Trial Court acquitted the appellant-convicts under Section 302 IPC on account of absence of direct evidence. The relevant portion of the trial court judgment is reproduced hereinbelow:-

“68. Coming now to the applicability of the section 106 of the Indian Evidence Act, 1872, I may state that the burden in the

aforesaid facts and circumstances of the case squarely shifts upon the accused persons to explain why the deceased died in the matrimonial house particularly when DW 5 sister of the deceased had deposed in defence evidence that on 10.01.2011 she along with her mother and sister remained in the house throughout the day and no outsider had entered in the house on that day. Then it was the duty of the accused person to explain why the deceased died unnatural death.....

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70. No doubt, in a criminal trial the burden of proving its case rests squarely upon the prosecution so as to prove the guilt of the accused beyond shadows of all reasonable doubts, but Section 106 Indian Evidence Act, 1872 is an exception to the said general rule. It applies to all those facts which are exclusively to the knowledge of the accused, or it will be extremely difficult for the prosecution to prove those facts. No doubt, accused is not supposed to prove innocence beyond all reasonable doubts, but what is required of him is to bring out a preponderance of probability. But here in the present case in the statement recorded under Section 313 Cr.P.C, nothing has been brought on record by them regarding their uninterrupted phone calls for considerable period particularly on the day of incident, when the deceased was strangulated and murdered.

The accused persons has failed to raise any probability of their innocence and they are not involved in commission of crime. The plea of alibi raised by the accused persons has not been satisfied beyond all probabilities. It is easy for a person in Delhi to reach from one place to other within a hour and the case of the accused is not of that, they were far away from Delhi and it was not possible for them to reach at house on the day of incident. Rather, both the accused were in Delhi and there is no evidence of time of leaving their house in the morning.

71. In the prosecution evidence it is already deposed by the witnesses that accused persons have harassed the deceased in connection with demand of dowry and as the marriage was performed on 13.12.2010 and the death of the

deceased has been caused within one month from the date of marriage. The prosecution witnesses has particularly deposed regarding the demand of dowry, in the shape of share from the Malka Ganj property, where the deceased and her sisters were having share of one room and deceased before her death was asked to sell the property.

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73. Apart from the facts discussed above, I deem it appropriate to discuss the conduct of accused persons also before coming to the conclusion. As it is established on record by the prosecution witnesses, particularly PW 1 that she received a telephonic message from the sister of accused in the night at around 11:00 PM on 10.01.2011 regarding the illness of the deceased. No efforts has been made by them to took the deceased to a Doctor at the earliest. Even no message to the Police had been given in the 100 number at the night. The Police has been informed in the morning at around 08:00 AM on 11.01.2011. The DW 5 has deposed that they remained in the house throughout a day and they were aware that the deceased was not feeling well. No such well being of the deceased was asked by the accused persons or their family members in the day time. All these facts shows the negligent conduct of the accused and their family members qua the deceased. It is also necessary to mention here that as it is clear from the record that at the initial stage accused persons has not been arrested by the Police and they have been arrested only after two and half year after recording the evidence by the PW 19. There were no efforts on the part of the accused persons to move any kind of application before higher ups regarding the investigation when the wife of the accused had died in unnatural circumstances and when it was opined by the Doctor that it was a murder and the death was caused due to strangulation and there were abrasion around the neck. They were silent throughout the period and did not made any efforts to know the reality or truth regarding the death of deceased Anju. This also casts a doubt on their role.

74. Though, there is no direct evidence to establish on record by the prosecution that the deceased has been murdered by the accused persons. Therefore, in absence of any direct evidence regarding strangulation and causing death of deceased Anju therefore, they can not be convicted for the offence under Section 302 IPC.

75. However, there is sufficient material available on record which has been proved and corroborated by the prosecution witnesses by leading oral and medical evidence. Therefore, I am of the considered opinion that prosecution has been able to prove the case against the accused persons beyond any reasonable doubt and there was a rebuttable presumption under Section 114 B of Evidence Act as well as under Section 304 B IPC, which is not being rebutted by the accused persons. The death of deceased has been caused in unnatural manner within seven years of her marriage as provided under Section 304 B IPC and here the death has been cause within one month of the marriage and there are allegations of demand of dowry and harassment on account of demand of dowry. Therefore, I am of the considered opinion that the accused persons had committed the offence punishable under Section 498 A/304 B/34 IPC. Let they be heard on the quantum of sentence.”

ARGUMENTS ON BEHALF OF THE APPELLANT-CONVICTS

4. Mr. Mohd. Ahmed, learned counsel for the appellant-convicts stated that the marriage between the deceased and appellant-convict Sandeep was a love marriage. He stated that they had married each other earlier but at the request of family members of the deceased, they underwent the ritual of marriage in a *dharamshala* on 13th December, 2010. He further stated that no cruelty was inflicted upon the deceased as there was no demand for dowry by the appellant-convicts and that she was comfortable in her matrimonial home.

5. He contended that even the statements made by the sister of the deceased, Kusum (PW-1) and their uncle, Ganesh Lal (PW-2) to the SDM (PW-24) on the day after the death of the deceased i.e 11th January 2011 did not contain any allegations of demand for dowry and the same was corroborated by the testimony of the SDM (PW-24). He emphasised that as there was no allegation against the appellant-convicts they were not arrested for more than two years after the death of the deceased.

6. Learned counsel for the appellant-convicts contended that the allegations with regard to demand for dowry by the appellant-convicts were for the first time made in vague statements to the SDM (PW-19) by two other sisters of the deceased – Pinky (PW-3) and Rakhi (PW-4), nearly two years after the death of the deceased. He pointed out that the sisters of the deceased while getting their statements recorded under Section 161 Cr.P.C., added a new allegation that on 1st January, 2011 when they had gone to the matrimonial house of the deceased, she had informed them that there was a dowry demand with regard to her share in her ancestral one room house and consequently, the appellant-convicts were arrested.

7. He emphasized that the conduct of the two sisters of the deceased was strange and unnatural inasmuch as they had not recorded their statements for two years and when their statement was subsequently recorded by the SDM, they had failed to mention the incident of 1st January, 2011. He relied upon the judgment of this Court in *Shyam Lal Gupta Vs. State and Ors., 2013 (137) DRJ 141*. The relevant portion of the said judgment is reproduced hereinbelow:-

“8. We have noted that on the next day i.e. 16th August, 1999, the appellant made statement to SDM (Ex.PW9/A) and in his

statement he has stated that it was an accident only and he did not raise any suspicion. He did not disclose about harassment or demand of dowry of Rs. 10 lakhs or cruelty to his daughter. Even if it is assumed that the appellant was under the shock of death of his daughter or that appellant came to know about demand of Rs. 10 lakhs after cremation of his daughter, as alleged by him in his statement in the Court, he should have made statement immediately or within one or two days thereafter or should have given some complaint in writing to the police or SDM. It is only for the first time on 22nd September, 1999 (after about 37 days of incident) that the appellant and his wife Suman Gupta made statement to SDM and made allegations regarding harassment and demand of dowry.

9. Further, the appellant has not alleged that any demand was made from him rather Suman Gupta (PW-12) has deposed that Satpal, uncle of Rajesh Gupta, his mother Pushpa Devi and Suman (sister-in-law) used to demand dowry from the deceased Geeta. PW-12 has deposed that after three days of marriage, her daughter came to her house and disclosed that she was being harassed and money was being demanded. It is pertinent to note that no specific allegations are made against the respondents or any other relatives of the husband and the allegations are general in nature and an attempt to implicate all the members of the family of the husband. Even if that be the case, this witness also did not lodge any complaint in this regard. The allegation is made belatedly and after the death of Geeta. It is apparent after cremation of Geeta, differences for some reason had cropped up. It is also relevant to note that no complaint regarding harassment, cruelty or demand of dowry was lodged by the deceased Geeta during her marital life or shortly thereafter.

10. It is also pertinent to note that at no point in time, in his statement before the SDM on 22th September, 1999 exhibited as Ex.PW9/B and his statement under Section 161 Cr. P.C. recorded on 15th October, 1999, the appellant had stated the factum that the husband of the deceased had kept the suitcase/attaichi behind the seat of the deceased and only in his

statement under Section 161 Cr. P.C. recorded on 13th January, 2000, approximately 4-½ months after the date of accident, he had mentioned that husband of deceased had deliberately removed the said suit case from the dickey and kept it behind the deceased's seat as a result of which the seat did not recline at the time of the accident. This allegation of the appellant is an afterthought and cannot be taken as a valid ground to impute any deliberate intention on Rajesh Gupta to cause the death of the deceased. The trial Court after elaborate analysis of the testimonies has reached a considered conclusion that the deceased Geeta lost her life in a car accident and it is not a case under Section 304B IPC. The contention of the appellant is farfetched and a mere hunch."

8. He submitted that the statutory presumption for dowry death under Section 304B IPC cannot be drawn against the appellant-convicts as there was no demand for dowry and no cogent evidence on record to prove that the deceased was subjected to cruelty soon before her death.

9. Learned counsel for the appellant-convicts also stated that the appellant-convicts were not present at their house at the time of death of the deceased as they were in their office. He stated that the said fact was proved by the Call Detail Record of both the appellant-convicts and the testimonies of their employers i.e. Hitesh Sahni (DW-1) and Hari Ram (DW-3) as well as Rohit Goyal (DW-2) who was the co-worker of the appellant-convict Sandeep.

10. He also pointed out that though the CDR of both the appellant-convicts was available with the investigating officer, yet the same was not brought on record. He submitted that the said act of the investigating officer amounted to withholding best evidence which was in favour of the appellant-convicts. In support of his submission, he relied upon the Supreme

Court judgment in ***Tomaso Bruno and Anr. Vs. State of U.P. (2015) 7 SCC 178***, wherein it has been held as under:-

“25. The production of scientific and electronic evidence in court as contemplated under Section 65-B of the Evidence Act is of great help to the investigating agency and also to the prosecution. The relevance of electronic evidence is also evident in the light of Mohd. Ajmal Amir Kasab v. State of Maharashtra [(2012) 9 SCC 1 : (2012) 3 SCC (Cri) 481] , wherein production of transcripts of internet transactions helped the prosecution case a great deal in proving the guilt of the accused. Similarly, in State (NCT of Delhi) v. Navjot Sandhu [(2005) 11 SCC 600 : 2005 SCC (Cri) 1715] , the links between the slain terrorists and the masterminds of the attack were established only through phone call transcripts obtained from the mobile service providers

26. The trial court in its judgment held that non-collection of CCTV footage, incomplete site plan, non-inclusion of all records and sim details of mobile phones seized from the accused are instances of faulty investigation and the same would not affect the prosecution case. Non-production of CCTV footage, non-collection of call records (details) and sim details of mobile phones seized from the accused cannot be said to be mere instances of faulty investigation but amount to withholding of best evidence. It is not the case of the prosecution that CCTV footage could not be lifted or a CD copy could not be made.

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28.Notwithstanding the fact that the burden lies upon the accused to establish the defence plea of alibi in the facts and circumstances of the case, in our view, the prosecution in possession of the best evidence, CCTV footage ought to have produced the same. In our considered view, it is a fit case to draw an adverse inference against the prosecution under Section 114 Illustration (g) of the Evidence Act that the prosecution withheld the same as it would be unfavourable to them had it been produced.”

ARGUMENTS ON BEHALF OF THE APP FOR STATE

11. *Per contra*, Ms. Aasha Tiwari, learned APP for the State contended that as per the Post Mortem Report (Ex. PW 12/A) the cause of death of the deceased was '*asphyxia consequent to obstruction of the airway by strangulation of the neck*' and Dr. Manoj Dhingra, (PW-12) who conducted the post mortem on the body of the deceased had opined that "*the injuries on the neck were sufficient to cause death in the ordinary course of nature*". She pointed out that as per the Post Mortem Report, all the injuries on the body of the deceased were ante mortem in nature and fresh in duration. She also stated that as per the subsequent opinion on the Post Mortem Report, the injuries were not self inflicted and there was least likelihood of the deceased strangulating herself.

12. Learned APP for the State further stated that the dead body of the deceased was found in her matrimonial house itself and the sister of the appellant-convicts, Seema (DW-5) had deposed that on the day the deceased had died, she along with her mother and sister remained in the house throughout the day and no outsider had entered the house. She contended that in view of the aforesaid, the burden was on the appellant-convicts to explain how the death of the deceased had happened and they had failed to discharge the said burden. She submitted that even though it is the duty of the prosecution to prove its case, Section 106 of Indian Evidence Act, 1872 was an exception to the said rule and in view of the same, the appellant-convicts should have disclosed facts that were exclusively in their knowledge and explained how the deceased had died an unnatural death.

13. She emphasised that the death of the deceased had taken place within one month of her marriage and that the sisters of the deceased Pinky (PW-3)

and Rakhi (PW-4) had deposed that the appellant-convicts had harassed the deceased in connection with a demand for dowry. She pointed out that they had deposed that the demand for dowry was specifically in regard to the deceased's share in the ancestral property situated in Malkaganj and that the deceased before her death was asked to sell the property.

14. Learned APP for the State contended that the plea of alibi raised by appellant-convicts had not been satisfied beyond all probabilities. She stated that appellant-convicts had failed to show that they were not involved in the commission of the crime. She pointed out that it was not the appellant-convicts' case that they were far away from Delhi and that it was not possible for them to reach their house on the day of the incident. She emphasised that both the appellant-convicts were in Delhi and it is very easy for a person in Delhi to reach from one place to another within an hour and that there was no evidence of the time on which the appellant-convicts had left their house in the morning on the date of the incident.

15. Learned APP for the State also stated that as per the evidence on record, a telephone call was made to the sister of the deceased Kusum (PW-1) at about 11 pm on 10th January, 2011 to inform her that the deceased was not waking up. She pointed out that the appellant-convicts had not made any efforts to take the deceased to a doctor or call the police and the first call to the police was made at 8 am on 11th January, 2011 by the uncle of the deceased. She emphasized that all the aforementioned facts show the negligent conduct of the appellant-convicts and their family members towards the deceased.

16. Learned APP for the State submitted that it could not be held as a rule of universal application that the testimony of the prosecution witnesses

becomes unreliable merely because there had been a delay in recording their statements under Section 161 Cr.P.C. In support of her submission, she relied upon the judgment of the Supreme Court in **V.K. Mishra & Anr. v. State of Uttarakhand & Anr.**, (2015) 9 SCC 588, wherein it has been held as under:-

“18. Section 145 of the Evidence Act reads as under:

“145. Cross-examination as to previous statements in writing.— A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.”

19. Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter when investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the

investigating officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo motu make use of statements to police not proved in compliance with Section 145 of the Evidence Act that is, by drawing attention to the parts intended for contradiction.

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24. Contentions urged assailing credibility of PW 2 do not merit acceptance. PW 2 in his evidence had clearly stated that he had come to Dehradun from Tehri on 7-8-1997 and was in his parents house till 3.00 p.m. on 10-8-1997 when he left for the hotel. PW 2 clearly explained the reason for his stay at hotel stating that distance of his father's house from Dehradun bus stand is 4-5 km and as he wanted to settle the matter with the in-laws of his sister Archana about their additional demand of dowry for Rs 5,00,000, he left his home to the hotel with his luggage at 3.00 o'clock perhaps to settle the matter with in-laws of Archana and in order to save time to take the bus on the night of 10-8-1997, PW 2 might have stayed in the hotel at Dehradun. In his evidence, PW 2 clearly stated that he had taken permission to be away from Tehri from 7-8-1997 to 10-8-1997 and that he took leave from 11-8-1997 for three-four days to go to Bombay in connection with his wife's treatment in Bombay. PW 2's evidence that he met Archana at their parental home on 9-8-1997 and that Archana informed him about the demand of Rs 5,00,000 and cruelty meted out to her and that he proceeded to the house of the appellants to settle the dispute amicably is quite natural and inspires confidence. PW 2 acted like a loving brother and probably he did not want to give tension to his old parents and on seeing the urgency of the matter, went to the appellants' house to convince them. By perusal of evidence of PW 2, it is seen that he remained consistent throughout his cross-examination and nothing

substantial was elicited to discredit his version. Merely because PW 2 has not produced documents showing the permission granted to him to be away from the headquarters Tehri from 7-8-1997 to 10-8-1997, version of PW 2 cannot be doubted. The reasons stated by PW 2 for his stay in hotel is quite convincing and the contention assailing the credibility of PW 2 was rightly rejected by the trial court and the High Court.

25. It has been further contended on behalf of the appellants that there was delay in recording the statement of PW 2 by the investigating officer and therefore his evidence should be viewed with suspicion, especially when he did not disclose about the alleged dowry demand before he left for Dehradun or till his statement was recorded by the police. In this context as pointed out earlier, PW 2 went to Mumbai for treatment of his wife and on 14-8-1997 he was informed about the death of Archana and on the next day he returned to Delhi by air and from Delhi he reached Dehradun by taxi. In his evidence PW 2 stated that the police being busy in the programme of Ms Mayawati, the then Chief Minister of Uttar Pradesh on 17-8-1997, the police did not examine and record his statement and it was only on 18-8-1997 that his statement was recorded by the investigating officer. Considering the evidence of PW 2, it cannot be said that the prosecution was deliberately taking time with a view to concoct a false case and decide about the shape to be given to the case. It is pertinent to point out that on the delayed examination of PW 2, no question was put to the investigating officer (PW 14) by the defence. Had such question been put to PW 14, he would have certainly explained the reason for not examining PW 2 from 15-8-1997 to 17-8-1997. Having not done so, the appellants are not right in contending that there was delay in recording the statement of PW 2."

19. Learned APP vehemently denied that the prosecution had withheld the best evidence. She referred to the testimonies of the investigating officer Insp. Vijender Pal (PW-28) and Israr Babu (DW-6). The relevant portions of the said testimonies are reproduced hereinbelow:-

A) Testimony of Insp. Vijender Pal (PW-28)

“.....I had made efforts to collect the CDR of mobile of accused Sandeep but as more than one year had already elapsed, therefore, the said record was not available. This information was also furnished to me by the service provider through email. I do not remember now the name of service provider. I had send the said request to service provider through E-mail, copies of said e-mails were not made part of record.....”

B) Testimony of Israr Babu (DW-6)

“X X X X by Shri P.K. Samadhiya, Ld. Addl. PP for the State.

“It is correct that we can generate the CDR of any phone only of preceding one year only as per DOPT guidelines. It is correct that the updated Cell ID chart Ex.DW6/G may not be the same which was applicable and prevalent in the year 2010 and 2011. I was able to retrieve the CDR Ex.DW6/A and Ex.DW6/D after about 5-6 years because the same must have been generated initially on the request of any investing agency.....”

20. Learned APP for the State lastly submitted that if the prosecution case had been established by the evidence adduced and if the said evidence was credible, any failure or omission on part of the investigating officer cannot adversely affect the prosecution case. She stated that illegality or defect in investigation cannot have any impact unless serious prejudice had been caused to the appellant-convict. In support of her submission, she relied upon the judgment of the Supreme Court in ***Ram Bali vs. State of Uttar Pradesh (2004) 10 SCC 598***. The relevant portion of the same is reproduced hereinbelow:-

“12. The investigation was also stated to be defective since the gun was not sent for forensic test. In the case of a defective

investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. (See Karnel Singh v. State of M.P.)”

COURT’S REASONING

IN VIEW OF TESTIMONIES OF THE SDM (PW-24) (WHO IS AN INDEPENDENT WITNESS) UNCLE GANESH LAL (PW-2), AUNT PHOOLWATI (PW-13) AND SISTER KUSUM (PW-1), (WITH WHOM THE DECEASED HAD STAYED FROM 06TH JANUARY, 2011 TILL 09TH JANUARY, 2011), THIS COURT IS OF THE OPINION THAT THE TESTIMONIES OF TWO OTHER SISTERS I.E. PINKY (PW-3) AND RAKHI (PW-4) ARE CONTRARY TO THE EVIDENCE ON RECORD, UNCORROBORATED AND AN AFTERTHOUGHT. ACCORDINGLY, THE TESTIMONIES OF PINKY (PW-3) AND RAKHI (PW-4) CANNOT BE RELIED UPON. CONSEQUENTLY, STATUTORY PRESUMPTION FOR DOWRY DEATH UNDER SECTION 304B IPC CANNOT BE DRAWN AGAINST THE APPELLANT-CONVICTS. ALSO, AS THE FACTUM OF CRUELTY HAS NOT BEEN PROVED, THE OFFENCE UNDER SECTION 498A IPC HAS NOT BEEN MADE OUT.

21. Having heard learned counsel for the parties and having perused the evidence on record, this Court is of the view that the entire case of the prosecution regarding dowry demand and cruelty is based upon the testimonies of Pinky (PW-3) and Rakhi (PW-4) i.e. the sisters of the deceased and no other evidence has been brought on record to prove the said allegations. However, the testimonies of Pinky (PW-3) and Rakhi (PW-4) do not inspire confidence inasmuch as they are not corroborated. In fact, other relatives of the deceased, namely, sister Kusum (PW-1), uncle Ganesh Lal (PW-2) and aunt Phoolwati (PW-13) have deposed to the contrary inasmuch as they have not mentioned any demand for dowry by the appellant-

convicts. The relevant portions of the testimonies of sister Kusum (PW-1), uncle Ganesh Lal (PW-2) and aunt Phoolwati (PW-13) of the deceased are reproduced hereinbelow:-

A) Testimony of Sister Kusum (PW-1)

“....In the said marriage solemnized on 13.12.10, there was no demand of any dowry from the side of the accused persons. We had given dowry articles i.e. one pair of gold Jhumki (ear rings), one gold ring, one gold chain and one pair payal (silver) on our own will as per our status in the marriage of Anju.....During her stay at my matrimonial home from 06.01.11 till 09.01.11 my sister Anju did not make any complaint to me regarding the accused persons or regarding any ill treatment at matrimonial home. Vol. Anju was feeling lethargic (sust) at that time.....Pinki and Rakhi did not inform me anything regarding any wrong doing on part of the accused persons against Anju during the stay of Anju at my home from 06.01.11 to 09.01.11. I do not remember whether my sisters Pinki and Rakhi had told me anything till 09.01.11 regarding any ill treatment given to Anju by the accused persons or regarding any demand of dowry by the accused persons. I and Tai Ji enquired from Anju as to why she was ‘sust’ from 06.01.11 to 09.01.11, however, she replied sasural main sab kuch theek thak hai.....”

B) Testimony of Uncle Ganesh Lal (PW-2)

“.....At the time of marriage, no demand of dowry was made from me by accused Rohit @ Sunny @ Sandeep or any of his family member.....”

Q. When Anju visited your house after her marriage, did you feel that Anju was in any trouble / problem?

Ans. Yes, I observed that she was lazy (sust thi)

On this, I asked my niece that is she having any problem to which she replied that she is living comfortably at her matrimonial home.....”

C) Testimony of Aunt Phoolwati (PW-13)

“.....When Anju came to my house after 4-5 days of her

marriage she did not tell me that any cruelty being committed upon her in respect of demand of dowry in her matrimonial home as to sell out the parental home and give the share to them.

My niece Anju did not tell me that on 1.1.2011, her sisters Pinki and Rakhi went to her matrimonial home for giving new year wishes. (Vol. Nobody went to house of Anju after her marriage). Anju had not told me that on the said new year day, Sunny and Deepak had threatened Pinki and Rakhi to kill Anju if money after selling the parental house is not given to them as dowry. It is correct that I had/have cordial relations with all sisters namely Anju, Pinki and Rakhi and they used to share their happiness and sorrow with me.

Till 14.1.2011, when my statement was recorded by the IO, Pinki and Rakhi did not tell me about the incident that took place on new year day at matrimonial house of Anju. I met Pinki and Rakhi, after the marriage of Anju, on the day of death of Anju. Pinki and Rakhi used to talk me on telephone. (Vol. I do not remember whether they had called me before the death of Anju.) After 14.1.2011 till today, Pinki and Rakhi had not told me that accused persons were demanding money after selling share of deceased in her parental house.....”

(emphasis supplied)

22. In fact, perusal of the paper book reveals that on 11th January, 2011 the SDM (PW-24) had recorded the statements of sister of the deceased, Kusum (PW-1) and uncle Ganesh Lal (PW-2) and they had not mentioned about the demand for dowry. The SDM (PW-24) had also asked other relatives to come forward to make statements, but no one including Pinky (PW-3) and Rakhi (PW-4) came forward. The relevant portion of the testimony of the SDM (PW-24) is reproduced hereinbelow:-

“XXXX by Shri Mohd. Ahmad, Ld. Counsel for both the accused.

.....I did not tell that I will record only the statements of Kusum and Ganesh Lal. No one else including any other sister of deceased volunteered to get her statement recorded before me. Neither any complaint was given to me by any relative of the

deceased nor any request was made for recording their statements.....”

(emphasis supplied)

23. Further, as per the testimonies of Pinky (PW-3) and Rakhi (PW-4), they got to know about the demand for dowry when they had visited the matrimonial house of the deceased on 01st January, 2011. However, they have admittedly not mentioned the said incident even in their statement recorded before the SDM (PW-19) on 24th January, 2013 nearly two years after the death of the deceased.

24. The judgment in **V.K. Mishra & Anr.** (supra) has no application to the facts of the present case, as the witness therein had duly explained why the delay had occurred. However, the witnesses in the present case have failed to give any reasonable explanation for the inordinate delay of two years in getting their statements recorded. Apart from making bald statements that the police officials had refused to record their statements, which is contrary to the deposition of SDM (PW-24) in Court, the said witnesses have not placed any material on record, in the form of a written complaint etc. to support their claim.

25. Consequently, in view of the aforesaid testimony of the SDM(PW-24) who is an independent witness as well as the testimonies of uncle Ganesh Lal (PW-2), aunt Phoolwati (PW-13) and sister Kusum (PW-1), with whom the deceased had stayed from 06th January, 2011 till 09th January, 2011, this Court is of the opinion that the testimonies of two other sister i.e. Pinky (PW-3) and Rakhi (PW-4) are contrary to the evidence on record, uncorroborated and an afterthought. Accordingly, the testimonies of Pinky (PW-3) and Rakhi (PW-4) cannot be relied upon.

both of my aforesaid employees delivered the same documents to Sh. Harvinder Singh, property broker in Bhera Enclave, New Delhi on my instructions. They had thereafter returned back to our office in Connaught Place. In the evening at about 7:00 pm, I had received a call from the accused Sandeep in a very shocking state. He requested me to start for my home immediately or he may be relieved as he has an emergency at his home. Since our work of the day had almost finished, we immediately packed up and started for home in the car being driven by Sandeep. On leaving us at our home in Paschim Vihar, Sandeep had immediately left for his home on his bike which he had parked outside my house. Throughout our return journey of about 45 minutes, Sandeep made some calls and also received few calls and therefore almost kept on talking on his mobile phone. We could assess that there was some serious issue in his family for which reason, I could not stop him from talking on mobile while driving otherwise I would have stopped him.”

B) Testimony of Rohit Goyal (DW-2)

xxx xxx xxx
.....I do not remember as to from which time to which time accused Sandeep remained with me on 10.01.2011 but he was with me in afternoon hours and he departed in the evening.....”

(emphasis supplied)

28. Therefore, the plea of alibi has been proved beyond all doubt.

29. Further, the judgment in **Ram Bali** (supra) has no relevance to the present case as the appellant-convicts have not been acquitted on account of defective investigation.

30. This Court also finds it strange that the Trial Court had acquitted the appellant-convicts under Section 302 IPC holding that there was no direct evidence, yet it had relied upon Sections 106 and 113B of the Indian Evidence Act, 1872 for convicting the appellant-convicts under Section

304B IPC. As the appellant-convicts were not present in their house at the time of the incident, Section 106 of the Indian Evidence Act, 1872 cannot apply to the present case. Consequently, the Trial Court was wrong in concluding that Section 106 of the Indian Evidence Act, 1872 would be applicable against the appellant-convicts.

31. Even though the conduct of the appellant-convicts had been negligent inasmuch as that they had neither informed the police nor called a doctor to examine the deceased, yet the same is not sufficient to prove that they had murdered the deceased. The prosecution has to stand on its own legs to prove its case and cannot rely upon the weakness of the defence. It is settled law that mere suspicion, however strong, cannot be a substitute for legal proof. The Apex Court in **Ashish Batham vs. State of M.P (2002) 7 SCC 317** has held us under:-

“8. Realities or truth apart, the fundamental and basic presumption in the administration of criminal law and justice delivery system is the innocence of the alleged accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the question of indicting or punishing an accused does not arise, merely carried away by the heinous nature of the crime or the gruesome manner in which it was found to have been committed. Mere suspicion, however strong or probable it may be is no effective substitute for the legal proof required to substantiate the charge of commission of a crime and graver the charge is, greater should be the standard of proof required. Courts dealing with criminal cases at least should constantly remember that there is a long mental distance between “may be true” and “must be true” and this basic and golden rule only helps to maintain the vital distinction between “conjectures” and “sure conclusions” to be arrived at on the touchstone of a dispassionate judicial scrutiny based upon a complete and

comprehensive appreciation of all features of the case as well as quality and credibility of the evidence brought on record.”

(emphasis supplied)

32. Keeping in view the aforesaid facts and mandate of law, the prosecution has not been able to prove its case beyond reasonable doubt and the appellant-convicts are entitled to benefit of doubt.

33. Accordingly, Crl. A 606/2018 is allowed and the impugned judgment of conviction and order on sentence are set aside. The appellant-convicts are acquitted for the offences punishable under Sections 498A, 304B and 34 IPC and are directed to be released forthwith. The appellant-convicts shall comply with the requirements of Section 437A Cr.P.C. within two weeks.

34. Crl. L.P. 260/2018 being bereft of merit, is dismissed.

35. Trial court record be sent back along with a copy of the judgment.

MANMOHAN, J

SANGITA DHINGRA SEHGAL, J

OCTOBER 24, 2019

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