



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

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Judgment reserved on: November 07, 2023
Judgment pronounced on: December 22, 2023

+ CRL. L.P. 592/2022 and CRL.M.A. 26903/2022

STATE

..... Appellant

Through: Mr. Pradeep Gahalot, Adv.

versus

JITENDER @ JEETU & ANR.

..... Respondents

Through: Mr. Hirein Sharma & Mr. Ajay
Rajbhar, Advs.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

SHALINDER KAUR, J

1. The present criminal leave petition under Section 378 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "CrPC") has been filed by the State seeking leave to Appeal against the impugned judgment dated 30.10.2019 passed by learned Additional Sessions Judge-05, West, Tis Hazari Courts, New Delhi (hereinafter referred to as 'learned ASJ') in the case no. 56529/2016 arising out of FIR No. 93/2013, under section 498A/304B/302/34 of the Indian Penal Code, 1860 (hereinafter referred as 'IPC'), registered at Police Station Nangloi whereby both the respondents were acquitted for the offences under Section 304B/302/34 of the Indian Penal Code but convicted for the offence punishable under Section 498A



read with Section 34 IPC. The order of conviction has attained finality as respondents did not prefer any appeal against their aforesaid conviction.

2. Vide order dated 31.10.2019, the learned ASJ, was pleased to award both convicts, sentence of Rigorous Imprisonment for two and a half years (2½) years each for the offence punishable under Section 498A IPC read with section 34 IPC. Further, a fine of Rs. 1,00,000/- each was also imposed upon the convicts out of which a sum of Rs. 1,50,000/- was to be paid to the father of the deceased under Section 357(1)(b) of Cr.P.C. In default of payment of fine, both the convicts would further undergo Rigorous Imprisonment for 5 months.

Factual background

3. The prosecution case as projected during trial is that an FIR No. 93/2013 was registered at police station Nangloi on 26.03.2013 for the offences punishable under Sections 498A/302/304B/406/34 IPC on the complaint of Hargyan, father of deceased Parvesh.

4. It is alleged that on 25.03.2013 at about 11:00 PM, youngest son of the complainant, Hargyan received a call regarding death of his daughter Parvesh due to heart attack. Complainant alongwith his elder son and few persons from the village rushed to the house of Parvesh and found that his daughter was lying on the floor. On inquiry, his son-in-law Jeetu told him that Parvesh was unconscious and that she has hung herself. Complainant raised suspicion that Jeetu and his mother namely Parvati had killed Parvesh. Thereafter, on 26.03.2013, vide DD No. 6A information was received at police station Nangloi and ASI Rajender Singh along with



Constable Biney reached the spot. Since the deceased had committed suicide within seven years of her marriage, proceedings were initiated by concerned SDM, who deputed Mr. J.C. Sehgal, Tehsildar in whose presence statement of complainant Hargyan, father of the deceased Parvesh was recorded to the effect that deceased was the youngest of his seven children and was married to Jeetu s/o Ramdev about 3½ years ago. Complainant further stated that both Jeetu and Parvati used to beat the deceased and many times used to leave her at her parental house after beating her. Complainant also stated that he had given articles like TV, cooler, fridge, almirah, sofa, ring, chain, jhumka, kundal, earrings and a motorcycle besides cash amount of Rs. 11,200/- in the marriage of his daughter according to his capacity. The FIR was accordingly registered on 26.03.2013. The investigation of the case was conducted by Inspector Dhiraj Kumar. He prepared the site plan, obtained the post-mortem report and the report of viscera from CFSL. Accused Jitender @ Jeetu was arrested on the same day whereas accused Parvati was arrested on 18.04.2013.

5. On completion of the investigation, the charge-sheet for the offences punishable u/s 498A/304B/406/302/34 IPC was filed. At the trial, the learned ASJ framed charges against both the respondents for the offences under Sections 498A/304B/302/34 IPC on 26.08.2013. Both the respondents pleaded not guilty and claimed trial.

6. In order to further its version, the prosecution examined 18 witnesses. As noticed above, Hargyan Singh (PW3) was the complainant, he deposed that deceased Parvesh was his youngest daughter, who got married to



accused / respondent Jitender @ Jeetu on 01.12.2009. Jitender @ Jeetu and in-laws of deceased Parvesh used to beat the deceased over dowry demand and harassed her. Many times, they used to leave her at her parental house after beating her. He further stated that he paid various amounts to the in-laws of her deceased daughter on different occasions. PW3 further deposed that he received a phone call at about 11:00 PM on 25.03.2013 from accused Jeetu who informed him about his daughter Parvesh, having expired where-after the witness, along with his two sons, reached the matrimonial house of his daughter and saw her dead body lying on the floor. The accused persons did not inform them anything and resultantly, police was called. Subsequently, his statement Ex. PW31A was recorded. The other material witnesses are **PW4 Dharampal**, **PW5 Rajesh**, brothers of the deceased Parvesh, **PW7 J. C. Sehgal**, then Tehsildar in the office of SDM, Punjabi Bagh, he recorded statements of father and brother of deceased, **PW8 Dr. Manoj Dhingra** was working with Dr. Vivek Rawat and conducted the post mortem of the body of the deceased. PW8 deposed that as per the post-mortem report, the cause of death was due to “Asphyxia as a result of hanging & all other injuries were ante-mortem”. **PW10 Inspector Amrender Kumar**, then Incharge Crime Team, West District, Delhi deposed that he reached at the spot and found one dead body of a female lying on the floor. After inspection of the scene of crime, he prepared the crime report, Ex. PW-10A. **PW16 IO / Inspector Dhiraj Kumar** deposed that on the day of incident, after conducting investigation, he arrested the accused Jitender on the same day and later on, arrested accused Parvati.



PW12 HC Pyare Lal and **PW13 SI Rajbir Singh** were examined, who deposed on the same lines as of PW16.

7. After recording of statement of all the witnesses, the prosecution evidence was closed. The statements of both respondents were recorded under Section 313 CrPC. They denied the incriminating evidence adduced against them and pleaded innocence. The respondents chose to lead defence evidence and examined DW1 Ram Chander and DW2 Vijay Kumar in their defence. The witnesses stated that they knew the accused Jitender and Parvati for the last several years. Accused/respondent no. 1 Jitender got married to deceased in the year 2009 and accused/respondents were having good relations with the deceased and there was no quarrel between them. Thereafter, defence evidence was closed.

8. On the culmination of the trial, the learned ASJ examined the entire record and vide impugned judgment dated 30.10.2019 acquitted both the respondents for the offences punishable under Section 302/304B/34 IPC. Questioning the acquittal of the respondents, the State has filed the present petition along with the appeal.

9. In support of the petition, Mr. Pradeep Gahlot, learned APP for State submitted that learned ASJ has failed to appreciate the evidence on record and apply the law as settled by various High Courts and the Apex Court. All the prosecution witnesses have stood their ground on the issue of harassment due to dowry demands extended by the respondents to the deceased Parvesh. Apart from minor contradictions, which are always expected, there was a direct link between the said harassment and death of



the deceased. However, the learned ASJ while recording the statement of dowry demand made by the sister-in-law of the deceased erred in holding that the same would not fall in the category of dowry and gave undue weightage to the statement of Hargyan Singh recorded before the Executive Magistrate without appreciating the fact that he was perturbed with unnatural death of his daughter when his statement before the Executive Magistrate was recorded. It would be extremely unfair to expect from a father at that time to give all details of his daughter's married life to the SDM.

10. It was submitted that learned ASJ further failed to appreciate that it is evident from the deposition of PW3 that he had thrice handed over Rs. 50,000/- to the respondents which falls within the category of dowry as defined under Section 2 of the Dowry Prohibition Act, 1961. It was submitted that the minor inconsistencies occurring in the testimony of the prosecution witnesses did not destroy the substratum of their deposition, which were otherwise cogent and reliable. Reliance was placed on the judgment in the case of **M. Narayan Das vs State of Karnataka** reported as **MANU/SC/0523/2015**. It was further submitted that dowry demand was raised by the respondents soon before the death of Parvesh, the father of the deceased had visited the matrimonial home of Parvesh on 24.03.2013 and gave Rs. 5,000/- to the respondents requesting them not to trouble his daughter in future. It was submitted that in view of the testimony of the prosecution witnesses as well as the post mortem report, it is a clear case of dowry death. Therefore, the impugned judgment be set aside and both the respondents be held guilty under the provisions of Section 304B/34 IPC.



11. Refuting the aforesaid arguments raised by learned APP, it was submitted on behalf of the respondents that learned Trial Court rightly refused to accept the testimony of PW2 as major improvements were made by the witness over his statement recorded by the police on 26.03.2013. Apart from the statement Ex. PW-3/A recorded of PW3, admittedly no previous complaint was made either by the deceased or her family members to the police from where it could be gathered that she was harassed for dowry demands.

12. It was submitted that under these circumstances, the testimony of Hargyan Singh (PW3) and Dharampal (PW4) cannot be made the basis for conviction of the respondents under Section 304B IPC as they are interested witnesses and their testimonies suffered from material inconsistencies, which cannot be toned down by terming the same as minor contradictions. It was also submitted that when the unfortunate incident occurred, both the respondents were not present in the house. Respondent no. 1, Jitender had come to his house after one hour of the incident while respondent no. 2, Parvati was at her parents' house. Therefore, the respondents cannot be connected with the incident and had no role to play in the suicide committed by Parvesh. It was submitted that DW1 and DW2, who are independent witnesses, have testified about this fact and have specifically stated that the relationship between the respondents and deceased Parvesh was cordial. Therefore, the entire story of the prosecution is motivated and concocted and the learned Trial Court has rightly acquitted the respondents and impugned judgment does not require any interference by this Court.



13. The learned Trial Court considered the evidence on record and came to the conclusion that the demand for money raised by the respondents was not in the nature of dowry demand resulting in unnatural death of Parvesh and thus acquitted them for the offences punishable under Section 302 IPC read with Section 34 IPC and 304B IPC read with Section 34 IPC.

14. The gist of the prosecution case is that there was consistent demand for dowry and the deceased was tortured for additional dowry, she was unable to sustain the physical and mental torture meted out to her and she committed suicide by hanging herself.

15. At the outset, it is relevant to mention that the interpretation of Section 304B IPC and Section 113B of The Indian Evidence Act has been given on more than one occasion by various High Courts and the Hon'ble Supreme Court. Section 304B IPC deals with "dowry death" which reads as follows:

"304-B. Dowry death.-(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called 'dowry death' and such husband or relative shall be deemed to have caused her death.

Explanation. - For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."



16. The legislature has also introduced Section 113-B of the Evidence Act alongside insertion of Section 304-B IPC.

"113-B. Presumption as to dowry death. When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

Explanation.- For the purpose of this section, 'dowry death' shall have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860)."

17. It would be manifest from the reading of the aforesaid provisions that the basic ingredients to attract the provisions of Section 304-B IPC are as follows:-

- (1) that the death of the woman was caused by any burns or bodily injury or in some circumstances which were not normal;
- (2) such death occurs within 7 years from the date of her marriage;
- (3) that the victim was subjected to cruelty or harassment by her husband or any relative of her husband;
- (4) such cruelty or harassment should be for or in connection with the demand of dowry; and
- (5) it is established that such cruelty and harassment was made soon before her death.

18. It is relevant to be noted that while considering the case under Section 304B IPC, the factum of unnatural death in the matrimonial home within 7 years of marriage is not alone sufficient to bring home the charge under Section 304B IPC. Further, it is also not enough that harassment or cruelty was caused to the deceased for demand of dowry at "some time", the cruelty has to be proved during the close proximity of time of death and it should be continuous harassment physical or mental by the accused person / persons so as to make the life of the deceased miserable, which may force the deceased



to meet with an unnatural death. The law has been well settled “the expression soon before” would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question.

19. A cumulative consideration of the facts and circumstances of the present case indicate that the deceased Parvesh was married to respondent no. 1 on 01.12.2009 and she died on 25.03.2013, which establishes that her death was caused within 7 years from the date of her marriage. From the post-mortem report, Ex. PW-8/A and testimony of Dr. Manoj Dhingra (PW-8), it is clear that the death of Parvesh was unnatural as PW-8 has proved the post-mortem report, Ex. PW-8/A and opined the cause of death as “death is caused due to Asphyxia as a result of hanging. All injuries are ante-mortem in nature.

20. To prove that the cruelty or harassment caused to the deceased by the respondents was ‘soon before’ her death, the prosecution has relied upon the testimony of Hargyan Singh (PW-3), Dharampal (PW-4) and Rajesh (PW-5). In so far as the statement of PW3, recorded by J. C. Sehgal (PW-7) is concerned, PW-3 has simply stated that the respondents used to beat his daughter and many a times, they used to leave her at his house after beating her. Similarly, PW-4 Dharampal has proved his statement recorded by PW-7 as Ex. PW-4/B wherein also, there is no mention about any dowry demand raised by the respondents or that deceased Parvesh was harassed by them on account of any dowry demand. It is not disputed that their statements were recorded by PW-7 on 26.03.2013, whereas their deposition was made before



the court on 06.05.2014 and 05.08.2014 respectively, which continued on subsequent dates. The charge-sheet was filed on 20.06.2013, wherein apparently, Hargyan (PW-3) and Dharampal (PW-4) never approached the police after 26.03.2013 till filing of the charge-sheets to state about the demands made by the respondents or that Parvesh was harassed by respondents for raising dowry demands, as deposed by them in the Court but were not recorded by SDM or the police. For the first time, they have made allegations with respect to dowry demands in the form of cash as raised by the respondents while deposing before the Court. Therefore, it is relevant to consider the testimony of PW3 and PW4 in detail.

21. Hargyan Singh (PW-3) has deposed that after marriage, his daughter started living in her matrimonial home where her husband and in-laws used to demand money from his daughter and he gave cash of Rs. 50,000/- on three occasions, once he handed over Rs. 50,000/- to respondent no. 1 in his house and twice Rs. 50,000/- each to the respondents in their house. He deposed that at the time of birth of a female child of his daughter Parvesh, her sister-in-law namely Tara demanded a gold ring from his daughter and he gave Rs. 30,000/- in cash to Parvesh in his house for getting a gold ring made for her sister-in-law. PW-3 has further deposed that apart from the respondents, the sister of respondent no. 1 namely Tara, his father Ramdev and his younger brother Ranjeet used to beat his daughter over dowry demands and harass her. Needless to say the entire testimony of PW-3 is major improvement over his statement Ex. PW-7/A recorded by PW-7. Apart from the improvements, the testimony of Hargyan (PW-3) and Dharampal (PW-4) are not only contradictory but highly inconsistent.



22. It also appears from the testimony of PW3, PW4 and PW5 that they have starkly contradicted the stand of each other about the place, the respondents and their family members to whom PW3 had handed over money on different occasion, to quench their thirst for dowry demands. The witnesses have also roped in the sister-in-law Tara for having raised dowry demands. PW3 deposed that she demanded a gold ring, whereas PW4 and PW5 deposed that she demanded gold earring. PW3 testified that he gave Rs. 30,000/- to his daughter for purchasing the gold ring. However, the testimony of PW5 is that he fulfilled the demand of gold earring raised by Tara. Interestingly, PW3, PW4 and PW5 have also included the names of other family members for having tortured Parvesh while raising dowry demand. Another new fact introduced by the witness is that the deceased Parvesh was addressed by respondents and others as “kali”. Noticeably, all the specific dowry demands have been urged by witnesses for the first time before the Court, which do not find any mention in their statements recorded by PW7.

23. Another important fact worth considering is that Dharampal (PW-4) has categorically deposed that the concerned SDM had recorded his complete statement and he did not omit to state anything before the SDM. Further, PW-7 J. C. Sehgal admitted that both Hargyan and Dharampal gave their statements as Ex. PW-7/A and PW-4/B respectively before him voluntarily and in full conscious state. Therefore, it emerges that PW-4 had got recorded a comprehensive statement of PW-7, which is Ex. PW-4/B. Consequently, the deposition made in Court with respect to dowry demand is a major improvement.



24. It is also to be noted that from the testimony of PW-4 Dharampal, it is clear that deceased had not told PW-4 directly about any of the atrocities or dowry demands during her visit to her parental home but she had narrated about the harassment to his wife and wife of his brother. However, neither wife of PW-4 nor the wife of his brother have been examined as a witness in the present case to prove the said dowry demand.

25. Testimony of Rajesh PW5 further reveals that he used to visit matrimonial home of his sister a number of times after her marriage with respondent no. 1. He was having cordial relations with Parvesh and her in-laws including respondent no. 1. He was given due honour on his visit to her matrimonial house. From the testimony of PW-5, it also emerges that respondents had never raised any demand of cash from his deceased sister.

26. As a sequel to above discussions, the analysis of the evidence in our view has been dealt with in proper perspective by the learned Trial Court as the learned Trial Court had found major improvements made by the prime witnesses in the present case. Apart from that, the learned Trial Court also found that their testimonies were inconsistent. Further, Hargyan Singh, PW-3 had testified that on 24.03.2013, he had visited the matrimonial house of his deceased daughter and he gave Rs. 5,000/- to her in-laws and requested them not to harass Parvesh as nothing was left with him to give them in future and if they would make demand, he would be forced to file a police complaint. The said part of his testimony is again a major improvement which does not find any mention in his statement recorded by PW-7. This fact has not been disclosed either by PW-3 or PW-4, when their statements were recorded by PW-7 on 26.03.2013. Learned APP has made an



impactful submission that it is justifiable for a parent been not able to make complete disclosure of the matrimonial life of his child, immediately after the death of their daughter specifically when the death is in unnatural circumstances to an authority. However, such a parent is expected to narrate the important instances, which would be relevant to assess the cause and effect of an unnatural death. In view of the above, the prosecution has miserably failed to prove any dowry demand raised by the respondents soon before the death of Parvesh.

27. On overall scrutiny of the evidence as a whole, in our comprehension, the prosecution has failed to prove the crucial ingredients of section 304B IPC that cruelty and harassment in connection with demand of dowry was made by respondents soon before death of Parvesh, thereby disentitling the prosecution to the benefit of statutory presumption available under Section 113B of the Act.

28. In view of the evaluation made herein above, we are of the view that the respondents have been correctly given the benefit of doubt by the learned ASJ, after analyzing the evidence under Section 304B IPC.

29. Accordingly, we find no merit in the Leave to Appeal against the impugned judgment dated 30.10.2019, which is hereby dismissed.

SHALINDER KAUR, J.

SURESH KUMAR KAIT, J.

DECEMBER 22, 2023/ SS