



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

% Reserved on : 23.02.2024
Pronounced on : 22.05.2024

+ **CRL. A. 191/2002**
RAJ KUMAR Appellant

Through: Mr. S.N. Gupta, Advocate.

Versus

STATE Respondent
Through: Mr. Laksh Khanna, APP for State
alongwith SI Reema PS Dwarka,
Sector-23, New Delhi.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal under Section 374 Cr.P.C. has been filed against the judgement of conviction dated 19.02.2002 and order on sentence dated 20.02.2002 passed by the learned ASJ in Sessions Case No.114/1999 arising out of FIR No.140/1999 registered under Sections 304B/498A/34 IPC at P.S. Dwaraka.

Vide the impugned judgement, the appellant was convicted for the offence punishable under Section 304B and 498A IPC. Vide the order on sentence, he was directed to undergo rigorous imprisonment for a period of 10 years for the offence punishable under Section 304B. For the offence punishable under Section 498A, the appellant was directed to undergo rigorous imprisonment for a period of 2 years alongwith fine of Rs.1,000/- in default whereof, he was directed to further undergo 3 months



imprisonment. The substantive sentences were directed to run concurrently and the period already undergo was also directed to be setoff.

2. The facts, as noted by the Trial Court, are as under:-

“ Three accused persons namely Raj Kumar Sharma s/o Gokul Chand Sharma, the husband and his two brothers, other two accused Krishan Kumar and Pradip Kumar were chargesheeted for offence U/s 498A and 304B IPC for the dowry death of Smt. Vandana Sharma w/o Raj Kumar Sharma. Charge for these two offences was framed against these 3 accused to the effect that after 4.12.96 till 7.7.99 these three accused subjected victim Smt. Tara @ Vandana to cruelty on account of dowry demand, accused Raj Kumar being the husband and other two accused being his brothers and thereby they committed offence U/s 498 IPC. The second head of charge is that on 6.7.99 at around 11.45 pm all these three accused committed offence of dowry death U/s 304 B IPC as Tara died in a house WZ-686/B1 Raj Nagar Delhi by burns under circumstances otherwise than normal within 7 years of her marriage and soon before her death the accused had subjected victim Tara to cruelty on account of dowry demand. This charge was framed on 21.3.00 and since all three accused pleaded not guilty to the charge the case proceeded for trial. ”

3. A total of 9 witnesses were cited as part of the chargesheet, however, during trial, only 8 were examined. *Dr. Arvind*, who had conducted the post mortem of the deceased proved the post mortem report as Ex.PW1/A. As per the report, the cause of death was opined to be shock consequent upon 100% ante mortem flame burns. The prosecution also examined brothers of the deceased namely *Sunil Kumar Sharma* and *Anil Kumar Sharma*. The inquest proceedings were proved through the concerned SDM *Sh. Arun Kumar Misra*, who also exhibited the statements the brothers of the deceased that were recorded by him, as Ex.PW3/A and Ex.PW4/A. *SI Sanjay Misra*, the I.O. deposed the facts as had been noted in the chargesheet.



4. All the accused persons were examined under Section 313 Cr.P.C. The present appellant, who is the husband of the deceased, denied having made any kind of demand for dowry or treated the victim with cruelty on account of any such demand. He further stated that he was a victim of circumstances and a false case was fabricated against him. The other accused persons also raised similar defence and denied the prosecution case.

Pertinently, vide the impugned judgment only the present appellant was convicted while the other two accused were acquitted. Concededly, the State has not challenged the acquittal.

5. In the present appeal, learned counsel for the appellant contended that there was considerable delay in registration of the FIR. Though the incident took place in the night of 06.07.1999 and indisputably, the two brothers of the deceased had arrived in Delhi on 10.07.1999, their statements came to be recorded by the SDM only on 12.07.1999. It was argued that the said delay alongwith other instances like omission to mention the name of any eye witnesses created serious doubts upon the prosecution case, as the said matter could be considered as being a result of deliberation and levelling of false allegations.

On this aspect, it is sufficient to note that *SI Sanjay Mishra* deposed that DD No. 32-A (Ex. PW4/E) was recorded on 06.07.1999 itself. The deceased was taken to *Safdarjung Hospital* on the same day and intimation in this regard was also given to the concerned SDM. Further, brother of deceased *Sunil Kumar Sharma* deposed that on reaching Delhi on 10.07.1999, he along with his brother went to P.S. Dwarka where they were asked to come on the next day. On 11.07.1999, they were again asked to come on 12.07.1999, on which day, their statements were finally recorded.



The trial Court found the contention to be meritless and does this Court.

6. It was next contended that the prosecution had failed to prove that there was any demand of dowry soon before death and that ingredients of neither Section 304B nor Section 498A were fulfilled. In this regard, learned counsel has referred in detail to the testimonies of brothers of the deceased. Another point of unfair investigation has also been raised by stating that appellant had also suffered burn injuries while saving the deceased, but the I.O. deliberately didn't bring the MLC/OPD report on record. Moreover, the information relating to the incident was given to the brothers of the deceased by one of the brothers of the appellant. It was further submitted that no person from the vicinity/locality was examined, though such individuals would have been the most material witness.

7. Learned APP for the State strongly opposed the contention and submitted that the ingredients were established and proved beyond doubt by the testimony of brothers of the deceased. It was further stated that the death took place within two and half years of marriage.

8. Pertinently, insofar as the present appellant is concerned, two major incidents formed the basis for holding him guilty for the offence under Section 498A and 304B IPC. The first incident related to the appellant hitting the deceased with an iron press, whereas the second incident related to the demand of Rs.10,000/- made by the appellant.

8. As regards the first incident, the impugned judgement notes that *Anil Kumar Sharma*, one of the brothers of the deceased, had deposed that during 1997-98, the appellant had hit the deceased with an iron press and that his sister-in-law *Sunita* had witnessed the said incident. He further deposed that after the said incident, the deceased was brought to her maternal home,



whereafter appellant's brother-in-law namely *Shyam Sunder Sharma* intervened in the matter and eventually, the deceased returned to her matrimonial home after about 15/20 days. Even *Sunil Kumar Sharma*, the other brother of the deceased also deposed that the appellant had given blow to the deceased with an iron press. He also specifically deposed that he was told about the said incident by his bhabhi-*Sunita*. The appellant, in his statement under Section 313 Cr.P.C. denied that any such incident had taken place.

9. While both the brothers of the deceased had deposed that the deceased was hit with an iron press by the appellant, however, it must be noted that their knowledge of the incident is hearsay inasmuch as they were not witness to the said incident and were informed about the said incident by their sister-in-law *Sunita*. It is also important to note that *Sunita*, who is allegedly an eye-witness of the said incident, and resultantly, material to the case of the prosecution, was not even cited as a witness. Though *Sunil Kumar Sharma* stated that a complaint/FIR was filed in the police station in this regard, however, no such FIR was ever placed on record. In cross-examination, though the witness produced a noting about the diary No. P.S. Barrakpur, the same didn't bear any seal of any police station. In fact, in his cross-examination, he even stated that he didn't recollect the date and month of the FIR registered.

10. As regard the second incident, the prosecution has alleged that the appellant harassed the deceased and demanded a sum of Rs.10,000/- and that the same was paid by the younger brother of the deceased namely *Anil Kumar Sharma*.

11. While both the brothers stated about the said incident, it must be



noted that *Sunil Kumar Sharma* did not mention about the said incident in his examination-in-chief, even though he had stated about the same in his statement recorded before the SDM. Rather, it was during his cross-examination that for the first time in Court, he stated that his brother *Anil Kumar Sharma* had told him about giving Rs.10,000/- to the appellant to start some work. He further stated that he had not given any money to the deceased as she never asked any money from him on account of any demand from the appellant. Interestingly, he introduced an altogether new fact that *Anil Kumar* had given another Rs.2,000/- as the appellant had shortage of money. This aspect of payment of Rs. 2000/- was never a part of prosecution case and he was duly confronted with his earlier statement recorded before SDM, wherein this aspect wasn't mentioned.

12. *Anil Kumar Sharma* deposed about the second incident during his examination-in-chief, wherein he stated that the appellant had asked for the said money to set up his own business. He further deposed that he had paid the said money to the appellant and further asked the appellant about what kind of business he would start and even offered to arrange some employment for him. But during his cross-examination, he rather stated that the appellant had demanded the money in confidence and that he had given the same in secrecy. He also mentioned about payment of another Rs. 2000/- and admitted that the said money was sent by his mother through money order. In this regard, it is worthwhile to note that neither any receipt was produced nor was the mother examined in trial.

13. Notably, both the witnesses stated to the effect that they did not remember the particulars like date, month or year when the money was given to the appellant. From the above, it is evident that insofar as *Sunil*



Kumar Sharma is concerned, neither was any demand extended to him nor did he pay any amount. As noted above, there is material contradiction in the testimony of *Anil Kumar Sharma*. If the appellant had demanded money in confidence, the same was not through the deceased. Further there is no clear cut and unambiguous allegation that on this account, the deceased was harassed and subjected to cruelty.

14. A further perusal of testimony of *Anil Kumar Sharma* would reveal that he also introduced a completely new allegation that two days prior to her death, deceased had made a phone call to him wherein she was crying but didn't say anything. He was confronted with the statement made before the SDM, wherein there was no mention of any such phone call by the deceased two days prior to her death.

15. It has also come in the testimony of both the brothers that the deceased alongwith the appellant had shifted to Delhi where they had taken up a rented accommodation in *Palam Colony*.

In support of his case, the accused persons examined one *Parwati r/o Palam colony*, who deposed that she knew the accused persons (including the appellant) as they were her tenants. She deposed that all the family members had good relationship and further that there was no complaint from the side of the deceased.

16. On a careful examination of the entire evidence that has come on record, this Court is of the considered opinion that the prosecution has failed to prove the two alleged incidents beyond reasonable doubt against the appellant. The witnesses have failed to mention any date, month or even year for both the incidents. While the knowledge of first incident is hearsay, there are material contradictions with regard to the second incident.



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17. Resultantly, the appeal succeeds and the impugned judgment of conviction and order on sentence are set aside.
18. The bail bonds and surety bonds are discharged.
19. A copy of this judgment be forwarded to the trial court as well as concerned jail superintendent.

MANOJ KUMAR OHRI
(JUDGE)

MAY 22, 2024
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