



2024:DHC:5002



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

% Reserved on : 22.04.2024
Pronounced on : 05.07.2024

+ **CRL. A. 627/2002, CRL.M.A. 2537/2003 and CRL.M.A. 2855/2003**

SUSHILA @ MAYA DEVI & ANR. Appellants
Through: Mr.S.K. Sharma, Mr. Rahul Sharma,
Mr. Yugant Kuhar and Mr. Tejas
Singh, Advocates.
Versus

STATE N.C.T. OF DELHI Respondent
Through: Mr. Laksh Khanna, APP for State.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal under Section 374(3) read with Section 482 Cr.P.C. has been filed against the judgement of conviction dated 18.07.2002 and order on sentence dated 19.07.2002 passed by learned ASJ in the case arising out of FIR No.380/1993 registered under Sections 498A/304B/406/34 IPC at P.S. Nabi Karim.

Vide the impugned judgement, the appellants were convicted for the offence punishable under Sections 498A/304B/34 IPC and vide the order on sentence, each of the appellant was directed to undergo rigorous imprisonment for a period of 10 years for the offence punishable under Section 304B IPC. For the offence punishable under Section 498A IPC, each of the appellant was directed to undergo rigorous imprisonment for 3 years alongwith fine of Rs.5000/- in default whereof, each of them was directed to further undergo simple imprisonment for 3 months. The sentences were directed to run concurrently and benefit of Section 428 Cr.P.C. was also



provided to them.

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

“Neelam (deceased) was married to Hari Om on 26.2.93. After her marriage she started living in the matrimonial home along with her husband. The other accused namely Shankarlal, Ved Prakash, Ghan Shyam, Sita Devi, Sushila and Seema were also residing there. It appears that Sushila was not having the best of the times in her matrimonial house and had lodged a complaint with the Crime Against Women Cell as early as on 7.10.93. An inquiry into the said complaint was being conducted by Insp. Ved Prakash of the Crime Against Women Cell. Insp. Ved Prakash had recorded the statement of Neelam on 8.11.93 and had fixed the next date of inquiry as 16.11.93. Neelam however expired due to burn injuries at her matrimonial home on 11.11.93. Information regarding this incident was received at P.S. Nabi Karim on 11.11.93 at 3.50 p.m. ASI Ved Prakash of PCR had informed that a woman had burnt herself after pouring kerosene oil at House No. 7575, Nabi Karim, Baraf Khana, Ram Nagar, Delhi. DD No. 22-A was recorded on this information and was entrusted to SI Dharambir Singh for investigation. SI Dharambir Singh along with SI Mahabir Singh and HC Shamsher Singh had gone to the spot. The SDM as well as the relations of the deceased had also reached there. The SDM recorded the statement of Anil Kumar Gupta, the brother of the deceased and passed an order directing the SHO, Nabi Karim to register a case against the accused and to investigate Case FIR No. 380/93 U/s 498A/304B/34 IPC was thus registered at P.S. Nabi Karim on the basis of report and statement of Anil Kumar Gupta, the brother of the deceased...”

2. The SDM had also recorded the statements of a number of other witnesses namely Smt. Madhu W/o Nathu Lal, the sister-in-law of the deceased, Smt. Ram Shri, the mother of the deceased, Shri Shashi Bhushan, a neighbour of the complainant, Shri Nathu Lal, the maternal uncle of the complainant and others. The SDM had conducted inquest proceedings. He had inspected the spot and had sent the dead body for postmortem. Dr. Dasari Hari from Maulana Ajad Medical College had conducted the



postmortem on the dead body of the deceased and had opined that the death was due to burns and shock consequent to the burn injuries which were ante mortem in nature. The total surface area of the burns was 100% ...”

3. Upon completion of the investigation, challan came to be filed against the appellants and certain other individuals (hereinafter ‘*accused*’) under Sections 304B/498A/406/34 IPC. Subsequently, the accused were charged under Sections 498A/304B/34 IPC. Further, two of the accused namely *Sita Devi* and *Sushila @ Maya*/appellant No.1 were additionally charged under Sections 406/34 IPC. The accused persons pleaded not guilty and claimed trial.

4. In trial, a total of 23 witnesses were cited by the prosecution to prove its case. The material witnesses examined were *Ram Shri* (mother of the deceased), *Nathu Lal & Anil Kumar* (brothers of the deceased), *Madhu* (sister-in-law of the deceased) and *Shashi Bhushan* (neighbour of the complainant). Though another witness namely *Daya Shankar Bharti* was examined but he was not offered for cross-examination. His testimony therefore, in light of the decision in *Ekene Godwin v. State of Tamil Nadu*¹, is of no avail. Besides them the other examined witnesses were formal in nature, who deposed relating to various aspects of investigation.

On the other hand, the accused persons, in their statements recorded under Section 313 Cr.P.C. claimed that they were innocent and had been falsely implicated in the case. They denied having harassed or tortured the deceased for or in connection with demand of dowry. In support of their contention, they also examined four defence witnesses.

5. On behalf of the appellants, the impugned judgment has been assailed

¹ 2024 SCC OnLine SC 337



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on the ground that the testimonies of the witnesses does not inspire confidence inasmuch as the same are full of material improvements. It is contended that based upon the same material, the Trial Court acquitted the other accused persons but convicted the present appellants, who were the mother-in-law and father-in-law of the deceased. The acquittal of the other accused persons for all the offences charged and appellant No.1 and *Sushila* under Section 406 IPC is not under challenge. Lastly, it was submitted that the appellants are presently 80 and 73 years of age and suffering from Dementia and Cancer respectively. While referring to their Nominal Rolls, it was further submitted that each of them have undergone nearly 5 years of sentence.

6. *Nathu Lal* (brother of the deceased) was examined as PW-6. He deposed that the accused persons had demanded colour T.V., fridge and cash and that he had become aware of the demand through the deceased. He further deposed that on one occasion when he had visited the house of the deceased, he found swelling on her face and blood was also coming from her mouth. A sum of Rs.50,000/- was also given to *Hari Om* on 03.10.1993 to start some business. On 17.09.1993, the appellant *Sushila @ Maya Devi* after giving beatings to the deceased, left her at Sultan Puri bus stand and a report was also lodged in this regard. A telephonic call was received in the house of their neighbour *Ram Chander Bansal* on 25.09.1993 informing that unless the demand of accused persons are fulfilled, the deceased need not come to the matrimonial house. On 03.10.1993, *Hari Om* had come to their house and requested that the deceased be sent alongwith him. In this regard, he had also assured in writing that in future there would be no complaint from him or his family members. Though the deceased had gone alongwith



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Hari Om, however, on the same night *Hari Om* informed telephonically that the accused persons were giving beatings to the deceased and that he had reported the matter to P.S. Nabi Karim. It was further deposed that the deceased had also given a complaint in the CAW Cell on 09.11.1993.

He was cross-examined by the defence. He denied the suggestion that the deceased had complained at the instance of *Daya Shankar Bharti*, who was running a society in the name of '*Dahej Virodhi Bharishtachar Unmoolan Sangh*'. He was confronted with his statement recorded before the SDM, wherein he had not stated about his coming to know of the demands through his sister. He admitted to have not stated before the SDM about the incident when he visited the house of her sister and found swelling on her face or bleeding from mouth. He was also confronted with his previous statement, wherein he had not stated about any incident of beatings given to the deceased when she was left at Sultan Puri bus stand.

7. The testimonies of *Anil Kumar Gupta* and *Madhu* were cumulative in nature to the testimony of *Nathu Lal* and they deposed largely to the same extent. The said witnesses were also cross examined and confronted with their previous statements recorded before the SDM during the inquest proceedings. A perusal of the testimony of *Anil Kumar Gupta* would reflect that he also made considerable material improvements in his testimony as in his earlier statements, he had not stated about the specific demand of TV and fridge or payment of Rs. 4000/- and 5000/-.

Only *Nathu Lal* and *Madhu* had stated that they had paid Rs. 4000/- and 5000/- in cash to *Maya Devi* however, no specific details as regards date and time of payment were mentioned.

8. On the aforesaid aspect, it is noteworthy that as per the case of



prosecution, the deceased during her lifetime had given a complaint to the CAW Cell, Nanakpura for offences punishable under Sections 498A/406 IPC. The same was enquired into by *Insp. Ved Prakash*, who was examined as PW-18 in the trial. He proved the statement of the deceased that was recorded by him during the said enquiry (Ex. PW18/B). In the said complaint/statement, the deceased did not make any allegation of demand of any TV or fridge or payment of any cash amount in lieu thereof. The allegations of demand of dowry were general and not specific.

At this stage, it is also worthwhile to note that the accused had examined four witnesses in their defence. The said witnesses deposed that the accused persons had a shop in Connaught place and both *Hari Om* as well as the deceased were asking for *Hari Om*'s share in the family property. In fact, they had been given a separate kitchen. Learned counsel for the appellants also pointed out that in his cross-examination, *Insp. Ved Prakash* had stated that during the enquiry in the CAW Cell complaint, the deceased also stated that she was living separately from her in-laws.

Also, *Kapil Dev Gupta*, an acquaintance of the accused persons was examined as a defence witness. He stated that the family members of the accused persons had a shop in Connaught Place and that *Hari Om* often used to quarrel with his mother as he wanted to have his share in the family property. The deceased also used to pick quarrels with her in-laws on the above issue. Later, the deceased was provided with a separate kitchen. He denied the suggestion that any demand of fridge or TV was made from the deceased.

9. Insofar as the payment of Rs. 50000/- is concerned, the same is not attributable to any of the appellants. Rather, it has come in the testimony of



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the witnesses that the said amount was handed over to *Hari Om* to start a business, as he was unemployed. There is no allegation that the deceased was harassed for this demand. Notably, *Hari Om* stands acquitted by the impugned judgment and the State has not challenged his acquittal.

10. The next allegation related to the beating given to the deceased. Although the prosecution witnesses had stated that they had noticed swelling on the face of the deceased at the time of visit on the occasion of *Teej* however, the same was an improvement as the said incident had not been mentioned in any of their earlier statements. Insofar as the incident dated 16.09.1993 is concerned, it is stated that the deceased was given beatings in relation to dowry whereafter she was left at the bus stand of Sultan Puri by *Sushila @ Maya Devi*. In the context of said incident, DD 28B came to be recorded on 18.09.2023. Pertinently, in the said DD, there is no allegation of any beating given to the deceased.

11. Insofar as the testimony of other public witness namely *Shashi Bhushan* (neighbour) is concerned, he had deposed that he had been told by the deceased from time to time that she was being harassed by her in-laws and that there had been a meeting of *Biradari* on 26.09.1993. In cross-examination, he was confronted with his statement recorded before the SDM, wherein he had not stated that the meeting of *Biradari* was in respect of dowry demand by the in-laws of the deceased.

12. The question that arises for consideration in the present case is whether in these facts and circumstances, the appellants' conviction under Section 304B/498A/34 IPC can be sustained. As noted above, the allegations of demand of colour TV and fridge remained unsubstantiated. The testimony of *Nathu Lal* on the aspect of payment of Rs. 4000/- and



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5000/- to *Maya Devi* also does not inspire confidence as the said aspect has not been spoken about by the other brother *Anil Kumar Gupta*. Further, no specific date or time for the demand or payment has been mentioned. Infact, *Madhu* (sister-in-law of the deceased), during her cross examination, also admitted that she did not remember any specific details as to when the aforesaid amounts were allegedly paid. More importantly, the deceased neither in her complaint filed a few days prior to her death nor in her statement recorded during CAW Cell proceedings, stated anything about any demand of colour TV/fridge or payment of Rs. 5000/- and 4000/- by her brothers to *Maya Devi*. The said complaint also pertained to Section 406 IPC for which not only the other accused but the appellant *Sushila @ Maya Devi* also stand acquitted.

13. Upon a careful analysis of the testimonies as well as the material placed on record, this Court is of the considered opinion that the allegations against the appellants under Section 304B/498A/34 IPC have not been conclusively proved beyond reasonable doubt. Consequently, the appeal succeeds and the appellants' conviction under Sections 304B/498A/34 IPC is set aside. Bail bonds and surety bonds, if any, are discharged.

14. The appeal is disposed of in above terms alongwith pending applications.

15. A copy of this judgment be communicated to the concerned Trial court alongwith the records as well as to the concerned Jail Superintendent for information.

MANOJ KUMAR OHRI
(JUDGE)

JULY 05, 2024/ga