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

Date of decision : 5th March, 2024

+ CRL.A. 505/2003

RAVI KUMAR

..... Appellant

Through: Mr. Pankaj Kapoor, Mr. Nikhil B.,
Mr. Aman Preet Singh, Mr. Anurag
A., Mr. Aditya A., Mr. Aniket Arora
and Mr. Vikalp Sharma, Advocates.

versus

STATE

..... Respondent

Through: Mr. Hemant Mehla, APP for the
State.
SI Anil Kumar, PS Najafgarh.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J. (ORAL)

1. The present appeal challenges the impugned judgment of conviction dated 08.05.2003 and order on sentence dated 11.07.2003 passed by Mr. H.S. Sharma, Additional Sessions Judge, New Delhi in FIR No. 352/1997 under Sections 498A/34 and Sections 306/34 of the IPC, registered at P.S. Najafgarh whereby the present appellant has been convicted under Section 498A IPC and sentenced to undergo RI for one year and to pay a fine of Rs. 5,000/- (in default, further RI for three months).
2. The case of the prosecution was that the present appellant was



married to Smt. Raj Kumari in the year 1988. It is the case of the prosecution that after the said marriage Smt. Raj Kumari had been treated properly for a period of one year and thereafter she was ill-treated by the present appellant alongwith other co-accused persons for not bringing sufficient dowry. It is further the case of prosecution that on 29.05.1997, at about 1:00 P.M. Smt. Raj Kumari sustained burn injuries and was immediately taken to Base Hospital by the appellant and one Kamlesh (PW-9). In the Base Hospital, she was examined by Dr. S.N. Patnaik (DW-1). It is further stated that she was referred to Safdarjung Hospital, however, she could not survive and succumbed to the burn injuries on the same day, i.e., 29.05.1997 at about 11.40 P.M. The family members of the Smt. Raj Kumari (hereinafter referred as 'deceased') were informed and statements of family members including Prem Narain (PW-1/father of the deceased) were recorded. Prem Narain (PW-1/father of the deceased) then handed over a typed complaint to the Investigating Officer, on the basis of which the present FIR got registered.

3. Charges under Section 498A read with Section 34 IPC and Section 306 read with 34 of the IPC were framed against the present appellant and four other persons namely Shri Govind Swami, son of Muthu Swami (father of the appellant), Shri Ramesh Kumar, son of Govind Swami (brother of the appellant), Smt. Sunita, wife of Ramesh Kumar (sister-in-law of the appellant) and Smt. Shanti Devi, wife of Govind Swami (mother of the



appellant).

4. After examining the evidence on record, the learned Trial Court acquitted all other accused persons except the appellant for offences punishable under Section 498A IPC read with Section 34 and Section 306 read with Section 34 of the IPC.

5. The present appellant was convicted under Section 498A IPC by the learned Trial Court, observing as under:-

“30. Now as regards accused Ravi is concerned I feel that the prosecution has been able to establish the charge under section 498-A IPC against him. It had been claimed by Prem Narain (PWI) in his report Ex. PWI/1 that Raj Kumari had come to their house and had brought a photograph of a nurse with whom Ravi was allegedly in love. The photograph had been taken during investigation. This particular fact has been substantiated by the witnesses. Not even a single suggestion had been put to any of the witnesses that the accused Ravi was not in love with any one or that a fabricated photograph has been produced or that false story with regard to this particular fact has been cooked up. Non-examination of Girl, accused Ravi used to come to Delhi after attending his duties from the places of his posting. His defence is that the family of the complainant wanted him (Ravi) to reside with them. However, this particular plea was never put to any of the witnesses. It is an after thought. It also belies common sense. Prem Narain (PWI) was having 4 sons. Two sons had been residing with him. The fact that Raj Kumari used to rush to her parents house is indicative of the fact that Raj Kumari was not in a position to pull on well with other family members. However it cannot be said with regard to accused Ravi. Being husband he was required to maintain her properly. He was not required to treat her with cruelty. Suggesting Raj Kumari that he (Ravi) was inclined to marry some other lady amounted to mental cruelty which is coverable u/s 498-A IPC.”

6. Learned counsel for the appellant submits that the entire basis of



convicting the present appellant is the testimony of PW-1 Prem Narain (complainant/father of the deceased). It is submitted that the said witness deposed that the appellant had suggested to the deceased that he was inclined to marry some other lady and the learned ASJ has held the same amounts to mental cruelty. It is submitted that the mere allegation that the appellant was having an extra marital affair would not amount to cruelty under explanation (a) to Section 498A IPC. It is submitted that the learned Trial Court had acquitted the present appellant and other co-accused persons while observing that prosecution did not rule out the accidental fire and the circumstances and the evidence produced on record has established that the said case was of an accidental fire for which no one was to be blamed. It is also submitted that the learned Trial Court believed the statement of the deceased to the given to her first treating doctor Dr. S.N. Patnaik (DW-1) whereby the deceased had told DW-1 that she had caught fire due to a stove burst while cooking food. The learned Trial Court accepted the same in the nature of a 'dying declaration'.

7. Reliance is placed on the following judgments:-

- a) K.V. Prakash Babu v. State of Karnataka, [(2017) 11 SCC 176]
- b) Ghusabhai Raisangbhai Chorasiya v. State of Gujarat [(2015) 11 SCC 753]
- c) Pinakin Mahipatray Rawal v. State of Gujarat, [(2013) 10 SCC 48]

8. *Per contra*, learned APP for the State submits that the finding of the



learned Trial Court does not suffer from any infirmity. The judgment of conviction and order on sentence are in accordance with law. The finding of the learned Trial Court with respect to the husband treating the deceased with cruelty is proper in the facts and circumstances of the case, and, therefore, the appeal should be dismissed.

9. Heard learned counsel for the parties and perused the record.

10. It is important to observe that the learned Trial Court has acquitted the other co-accused persons for offences punishable under Section 498A/306 read with Section 34 of the IPC and the present appellant under Section 306 read with 34 of the IPC by observing as under:-

“24. The marriage in this case had taken place in 1988. Raj Kumari had sustained the bum injuries on 29.5.97 at about 1.30 p.m. Therefore the presumption under section 113-A Evidence Act was not available to the prosecution as the death had taken place after more than 7 years of the marriage. The prosecution was required to establish that Raj Kumari had been subjected to harassment to such an extent that she had had no option but to commit suicide. The accused have not been charged u/s 302 or 304-B IPC. The charge is specific. The prosecution was required to establish that Raj Kumari had committed suicide and it were the accused who had created such an atmosphere for Raj Kumari by their act and conduct that Raj Kumari took the extreme step of committing suicide. In the present case Raj Kumari had sustained bum injuries at 1.30 p.m. Admittedly she had been removed to Base Hospital by accused Ravi and Kamlesh (PW-9). Raj Kumari has been first attended by Dr.S.N.Patnaik (DW1). Statement of Dr.S.N.Patnaik had been recorded by the Investigating Officer. It is EX.PW15/DA. Dr Patnaik (DW1) has stated before the I.O. that Raj Kumari had been examined by him. She was conscious. She was unable to speak properly. When he (doctor) asked her about the incident, she (Raj Kuinari) had told him (doctor) that she (Raj Kumari) got fire due to stove burst while cooking



food. Her clothes were immediately removed and she was given first aid and then referred to Safdarjung Hospital. The clothes were bearing strong smell of Kerosene Oil. The clothes had been sealed and handed over to the Investigation Officer. Now this particular statement of Raj Kumari before DW1 amounts to a dying declaration as Raj Kumari has died on that very day i.e. 29.5.97 at 11.40 p.m. and her cause of death was burn injuries. It cannot be said that Dr Patnaik had not noticed the smell of kerosene oil. However, this fact alone cannot be taken against the accused. Raj Kumari was referred to Safdarjung Hospital where her MLC Ex.PW7/1 was prepared. Before the doctor of Safdarjung hospital also she had given the history of her having sustained the bum injuries because of bursting of kerosene oil stove while she was making food. The photographs Ex PW15/3 to EX.PW15/8 show that it was a kerosene oil pressure stove. The stove Ex.P1 was produced in the court as it was seized by the I.O. during investigation. Although it had not brusted in the literal sense yet it cannot be said that the flames would not have engulfed Raj Kumari in any other manner. The spreading of the kerosene oil because of defects is not ruled out. The clothes of Raj Kumari had been sealed by Dr.Patnaik (DW1). Those were not sent to FSL to find out as to what was the nature of the cloth. Priyanka (PW4) and Kamlesh (PW9) were the first one to reach there along with accused Ravi. The prosecution was required to rule out the Accidental fire. The circumstances and the evidence produced by the prosecution establish that it was an accidental fire for which no one can be blamed. The view which is favorable to the accused is being taken in view of the statement of Dr. Patnaik (DW1), the contents of the MLC EX.PW7/1 and the statements of PW-4 and PW-9. Accused Ravi had been examined by the Investigating Officer immediately after the occurrence. His statement had been recorded. The same is Ex.PW15/3. The defence had been taken by accused Ravi at the earliest. It cannot be said that accused Ravi had in any way influenced Raj Kumari when she had been examined by Dr.Patnaik (DW1) or the doctor of Safdarjung Hospital who had prepared the MLC.”

27. The marriage of Raj Kumari with Ravi had taken place in 1988. It has come in evidence (in the cross examination of PW1, PW2, PW8



and PW12) that there had not been any complaint in writing against demand of dowry to any authority before this incident. I shall deal with the cases of ...the charge against any of the accused or not.

28. Accused Ramesh is the elder brother of Ravi. Sunita is his wife has come in th statement of Prem Narain (PW1) that accused Ramesh and his wife had been residing in a tenanted house. Priyanka (PW4) in her cross examination has admitted that Ramesh used to reside separately in the colony. Smt. Shiela (PW12) in her cross examination has admitted that Ramesh and Sunita had started residing separately but that has been done 10/15 days prior to the death of Raj Kumari. It has also come in the statements of PW1, PW2, PW4 and PW12 that most of the times (when accused Ravi used to stay outside) Raj Kumari used to live with her parents. Bhagwan Dass (PW3) is the maternal uncle of the deceased. He has not supported the prosecution with regard to the fact that Raj Kumari had told him that she used to be ill treated by her Jeth and Jethani (Ramesh and Sunita). He was duly confronted with his previous statement Ex.PW3/A. Being maternal uncle of Raj Kumari he would not have supported the accused had there been no truth. Therefore, as regards accused Ramesh and Sunita is concerned, the allegations against them are general in nature and cannot be given any weight.

29. Now so far as accused Govind Swami is concerned, it has been stated by Ramesh (PW2) in the statement dated 30.5.97 that Raj Kumari used to write letters to them. However, not even a single letter has been produced to show that Govind Swami used to ill-treat Raj Kumari or he used to demand any dowry. General allegations have been leveled by the PWs in their statements. I am not inclined to convict accused Govind Swami on the basis of general allegations.”

11. So far as the present appellant is concerned, the father of the deceased in his examination-in-chief has stated that before the death of the deceased on 26.05.1997, about 15 to 20 days back the deceased had come to their house and had brought a photograph of a nurse. It is stated by him that the



deceased had told the family that the appellant had been saying that he would marry the said nurse and would kill the deceased. It is further stated that the appellant and other co-accused persons had been harassing the deceased and beating her. The said averments were part of the complaint made by him to the police which is Ex.PW-1/1.

12. It is pertinent to note that the said photograph has been exhibited by the Investigating Officer as Ex. PW-15/18. In his cross-examination, the said Investigating Officer submits that he never investigated as to who the said nurse was and neither he tried to contact her. Further, Investigating Officer also submitted that he had not prepared any recovery memo of the photograph. The mode of proof was objected to at that time which is reflected in the examination in-chief. The picture in that photograph is unidentifiable. The mode of proof was objected to at the time of rendering the same in evidence, but the learned Trial Court did not give any reasons for accepting the same as admissible evidence. Apart from that, the photograph does not show the present appellant along with the person shown in the said photograph or any other connection thereto.

13. It is further pertinent to note that this fact of photograph being brought by the deceased is part of the statement made by the said witness PW-1 with respect of other allegations of harassment on account of demand of dowry and abetment of commission of suicide by the deceased.

14. The statement of PW-1 with regard to alleged complaint by the



deceased would come in the nature of hearsay evidence.

15. The learned Trial Court based the conviction on the basis of the photograph and the said alleged statement of the deceased before PW-1 without any other corroborative material on record.

16. In the opinion of this Court, the same would not be sufficient to hold the present appellant guilty for offence under Section 498A IPC.

17. Section 498A of the IPC records as under:-

“498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purposes of this section, “cruelty” means—

(a) anywilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

18. In **Pinakin Mahipatray Rawal v. State of Gujarat [(2013) 10 SCC 48]**, the Hon’ble Supreme Court held as under:-

“23. We are of the view that the mere fact that the husband has developed some intimacy with another, during the subsistence of marriage and failed to discharge his marital obligations, as such would not amount to “cruelty”, but it must be of such a nature as is likely to drive the spouse to commit suicide to fall within the Explanation to



Section 498-A IPC. Harassment, of course, need not be in the form of physical assault and even mental harassment also would come within the purview of Section 498-A IPC. Mental cruelty, of course, varies from person to person, depending upon the intensity and the degree of endurance, some may meet with courage and some others suffer in silence, to some it may be unbearable and a weak person may think of ending one's life. We, on facts, found that the alleged extramarital relationship was not of such a nature as to drive the wife to commit suicide or that A-1 had ever intended or acted in such a manner which under normal circumstances, would drive the wife to commit suicide.

19. In view of the above, the present appeal is allowed, judgment of conviction dated 08.05.2003 and order on sentence dated 11.07.2003 passed by Mr. H.S. Sharma, Additional Sessions Judge, New Delhi in FIR No. 352/1997 under Sections 498A/34 of the IPC, registered at P.S. Najafgarh is set aside.
20. Accordingly, the appellant stands acquitted.
21. Copy of the order be sent to the concerned Jail Superintendent, for necessary information and compliance.
22. Order be uploaded on the website of this Court, *forthwith*.

AMIT SHARMAA
JUDGE

MARCH 05, 2024/nk