

NON-REPORTABLE**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO.911/2023
@ SPECIAL LEAVE PETITION NO. 4639 OF 2018****MUNSHI****.... Appellant*****Versus*****STATE OF UTTAR PRADESH****... Respondent****J U D G M E N T****Rajesh Bindal, J.**

1. The present appeal was filed by three convicts namely Kamlesh Singh, Vishwaraj Singh and Munshi Singh. *Vide* order dated 17.05.2018, the appeal *qua* appellant Nos. 1 and 2 was dismissed and notice was issued only *qua* appellant No.3, namely, Munshi. He is the brother of husband of the deceased. The other two appellants are husband and brother of the deceased.

2. An FIR (Crime Case) No.30 of 1993 was registered on the complaint of Chander Singh (PW-1) son of Muneshwar Singh stating therein that marriage of his sister

Janki Devi (deceased) was solemnised with Kamlesh Singh about four years ago. Sufficient dowry was given as per their standard. Immediately after the marriage, family of the husband started demanding a buffalo and a Vicky and pressurised her. She was even beaten up. His deceased sister had talked to him about this many times. When he talked to the husband and her in-laws about this, he was abused and pushed out of their house. They threatened that they will kill her sister.

3. On 27.02.1993, Vishwaraj Singh (brother-in-law of the deceased) said to his brother Shivraj Singh (PW-2) that in case the demand is not met, it will not be good for them. On 28.02.1993, having come to know about the death of his sister, a complaint was made to the police that she had been killed as the demand of dowry was not met. Charge-sheet was presented. After trial, Kamlesh Singh, the husband, Vishwaraj Singh and the present appellant, brothers-in-law of the deceased, were held guilty of charges under Sections 304B and 498A of the Indian Penal Code, 1860 (for short "the IPC), and Section 4 of the Dowry Prohibition Act, 1961. They were convicted and sentenced

to undergo 10 years rigorous imprisonment under Section 304B, 2 years under Section 498A of the IPC and 2 years rigorous imprisonment under Section 4 of the Dowry Prohibition Act, 1961. In appeal filed before the High Court at Allahabad, the judgment and order of the trial court was upheld and the appeal was dismissed.

4. The learned counsel for the appellant No.3-Munshi submitted that no case was made out against him as there are no direct allegations regarding his being party to alleged torture of the deceased for demand of dowry. The allegations in the complaint or the evidence led are quite general in nature. The appellant had been convicted only with the aid of Section 113B of the Indian Evidence Act, 1872 (for short "the Evidence Act") on presumption. However, that presumption will not be available in the case in hand for the reason that there is no evidence of cruelty or harassment in connection with demand of dowry soon before the death of the sister of the complainant. The appellant being the brother of husband of the deceased was not going to receive anything, neither the buffalo nor the Vicky. Even Section 304B IPC also provides that any cruelty or

harassment by the husband or any relative has to be soon before the death. In fact, the deceased died of consuming poison for which the appellant has nothing to do with in particular.

5. On the other hand, the learned counsel for the State submitted that it is a case of dowry death just four years after the marriage. A young girl was killed on account of torture for not meeting the demands of greedy in-laws. There are specific allegations in the complaint and the evidence led by the prosecution. The appeal *qua* husband and one of the brother-in-law of the deceased has already been dismissed by this Court and the fate of the present appeal also has to be in the same line as his role is also similar.

6. Heard learned counsel for the parties and perused the relevant referred record. The cause of death as available from the forensic report is poison. The allegation in the FIR lodged by the brother of the deceased is that the marriage of his sister was solemnised with Kamlesh Singh about four years prior to the incident. They were not happy with the dowry and had been making repeated demand of buffalo and

a Vicky. As the same was not fulfilled, the deceased was being harassed. They had even misbehaved with the complainant when he visited to resolve the issue. They had even threatened to kill her.

7. It is not in dispute that there is no eye-witness to the crime. The entire case of the prosecution rests on circumstantial evidence of the prosecution. Total four witnesses have been examined by the prosecution. Chander Singh (PW-1) had stated that even a day before the occurrence when his brother Shivraj Singh (PW-2) had gone to see the parikrama mela, Devgawan, where he met the accused Vishwaraj Singh, the other brother-in-law of the deceased, who reiterated the demand of dowry. In his entire statement, besides the general allegations that the sister of the deceased was being harassed for not meeting their demand of buffalo and a Vicky, the appellant has not been specifically named. To put the record straight, it is added here that Vishwaraj Singh's conviction has been upheld. However, nothing specific has been stated by Chander Singh (PW-1)-the complainant to bring home the guilt of the appellant-Munshi for raising presumption as contained in

Section 304B IPC read with Section 113B of the Evidence Act. In his cross-examination, he stated that he had seen his sister 4/5 months before her death. That means he had not even visited the matrimonial house of the sister on the birth of her daughter who was about two months old at the time of incident. Similarly, in the statement of Shivraj Singh, brother of the complainant, the allegations are quite general in nature with no specific allegation against the appellant soon before the incident, which is *sine qua non* for invoking presumption under Section 304B IPC and 113B of the Evidence Act.

8. For the reasons mentioned above, in our view, the evidence produced on record by the prosecution is not sufficient to uphold the conviction of the appellant-Munshi who is brother-in-law of the deceased, by raising presumption.

9. Accordingly, the appeal is allowed and the judgments and orders passed by the High Court and the Trial Court are set aside with respect to the conviction and sentence of the appellant-Munshi. Bail bonds submitted by him are cancelled.

.....J.
[Abhay S. Oka]

.....J.
[Rajesh Bindal]

New Delhi
March 23, 2023.