

State vs Sudhir Kumar on 24 December, 2024

IN THE COURT OF ADDITIONAL SESSIONS JUDGE-08, WEST
DISTRICT TIS HAZARI COURTS, DELHI

Presided by: Hem Raj, DHJS

CNR No DLWT01-011126-2018
SC No.829/2018
FIR No.463/2018
PS Nihal Vihar
U/s 498A/304-B/34 IPC

In the matter of:

State

Versus

1. Sudhir Kumar
S/o Sh. Kirpal Singh
R/o H. No. E-2/45, Shiv Ram Park,
Nangloi, Delhi

2. Ram Sakhi
W/o Sh. Kirpal Singh
R/o H. No. E-2/45, Shiv Ram Park,
Nangloi, Delhi

.....Accused Persons

Date of Institution of case :07-12-2018
Date of reserving Judgment :12-12-2024
Date of pronouncement of judgment :24-12-2024

State Vs Sudhir Kumar & Anr SC No. 829/2018 FIR No.463/2018 1/28

Appearance:

For the State : Mr. Himanshu Garg, Ld. Additional
Public Prosecutor.

For accused persons : Sh. Ankit Rai, Ld. Counsel.

JUDGMENT

1. The accused namely Sudhir Kumar and Ram Sakhi faced trial for the offences u/s 498A/304B/34 IPC. A chargesheet was filed against them SHO PS Nihal Vihar for the commission of offences u/s 498A/304B/34 IPC.

The case of the prosecution:

2. The facts of the prosecution case, in brief, are that on 28.07.2018, the police received an information that one married woman, namely, Pooja W/o Sudhir had been brought to the SGM Hospital in unconscious state. She had been declared dead in the casualty by the doctors. On inquiry, police came to know that the woman got married in the year 2017. Accordingly, SDM Punjabi Bagh was informed. PW-1, Sh. Sitaram recorded his statement Ex. PW-1/A to the SDM to the effect that deceased Pooja was her youngest child. She was married on 08.05.2017 with accused Sudhir Kumar. In the marriage, he had given dowry as per his capacity. The accused Sudhir Kumar was working in Sehgal Hospital as the ultrasound technician. He further stated that for about 1½-2 months there was no complaint State Vs Sudhir Kumar & Anr SC No. 829/2018 FIR No.463/2018 2/28 in the marriage. However, one day his daughter told him that Sudhir had demanded a sum of Rs. 60,000/- and one bullet motorcycle for his transport. When he talked about this with the parents of Sudhir, they stated that Sudhir was their son-in-law and if they wished, they could give him the money. He told them that they may sell their gold jewelry and satisfy the needs of Sudhir Kumar and solve the problem. However, the father of Sudhir did not accede with his request and on not receiving the said amount, his son-in-law had started beating the deceased. Due to the problems in the life of deceased, his wife had an heart attack. About three months back, his deceased daughter had sent a voice message through Whatsapp on the mobile phone of her elder daughter Aarti, wherein she stated that accused Ram Sakhi and Sudhir were demanding the money. Thereafter, on 14.07.2018 on the occasion of his marriage anniversary, Pooja came to their house and told her mother that she would never come back to his house. On 28.07.2018, one neighbour of in-laws of deceased Pooja had called them to inform about the ill condition of deceased and further that she was being taken to SGM Hospital. When they reached at the hospital, they saw that their daughter Pooja had expired.

On the aforesaid statement, an FIR u/s 304B/498A/34 IPC was registered. The postmortem of the deceased was conducted. In the postmortem, doctor opined the cause of death as "asphyxia as a result of ante-mortem hanging". After the postmortem, the dead body was handed over to the family members of the deceased. During the investigation, State Vs Sudhir Kumar & Anr SC No. 829/2018 FIR No.463/2018 3/28 Aarti produced her mobile phone and one CD allegedly containing the voice mail sent by deceased Pooja to her.

Accused Ram Sakhi was not arrested but was placed in column no. 11. In the charge-sheet, it was stated that the supplementary charge-sheet along with CDR of the mobile phones of deceased and Aarti would be filed. Later on, the FSL result dated 30.09.2019 was filed on the record. The said FSL result pertains to one mobile phone make Karbonn and another mobile phone make Micromax.

3. The Ld. Magistrate committed the case to the Court of Sessions after compliance of the relevant provisions.

The charge against the accused:

4. The accused persons namely Sudhir Kumar and Ram Sakhi did not plead guilty for offences u/s 498A/34, u/s 304B/34 as well as for the alternate charge u/s 306/34 IPC framed and they claimed trial.

The evidence by the prosecution:

5. To prove the afore-mentioned charge against the accused persons, the prosecution got examined eight witnesses in all. For the sake of convenience, a brief description of testimonies of all the prosecution witnesses including the oral as well as documentary evidence, in tabular form, is as under:-

(Oral evidence):

PW-1 Sh. Anil The then Tehsildar / Ex. Magistrate Punjabi Chaudhary Bagh, who recorded the statements of Sh. Sita State Vs Sudhir Kumar & Anr SC No. 829/2018 FIR No.463/2018 4/28 Ram and Smt. Savitri i.e. parents of deceased. He conducted inquest proceedings in the case. PW-2 Sh. Sita Father of deceased, who deposed about the Ram instances of harassment and cruelty caused to his daughter (since deceased) by accused persons.

PW-3 Smt. Savitri Mother of deceased, who also deposed about the instances of harassment and cruelty caused to her daughter (since deceased) by accused persons.

PW-4 Shri He, on the asking of IO, made videography of Mukesh Kumar the postmortem proceedings conducted on 29.07.2018.

PW-5 HC Nemi He being the DD writer at PS Nihal Vihar, Chand recorded DD No. 10A dated 28.07.2018. He was also working as MHC(M) and deposed about making the relevant entries in register no. 19 regarding deposition of case property. PW-6 Smt. Aarti She is the younger sister of deceased. She deposed about receipt of a voice mail on her Whatsapp from the mobile phone of deceased wherein she had levelled serious allegations against the accused persons.

PW-7 SI Hema Ram	He being the initial IO, deposed about the investigation done by him in the case
PW-8 Inspector Raj Pal Singh	He being the IO deposed about the further investigation done by him in the case.

(Documentary evidence):

Ex.PW-1/A	Statement of Sh. Sita Ram, father of deceased.
Ex.PW-1/B	Statement of Smt. Savitri, mother of deceased.
Ex.PW-1/C	Order for postmortem examination on the dead body of deceased Pooja.
Ex.PW-1/D	Request to perform autopsy on the dead body of deceased.

State Vs Sudhir Kumar & Anr SC No. 829/2018 FIR No.463/2018 5/28 Ex.PW-1/E Brief facts of the case prepared the IO, duly attested by SDM.

Ex. PW-1/F Form no. 25.35(1) (B) Ex.PW-1/G Statement of Sh. Sita Ram and Dinesh regarding dead body identification of deceased.

Ex.PW-2/A	Handing over memo of dead body.
Ex.PW-2/B	Seizure memo of photographs of marriage ceremony of deceased Pooja.
Ex.PW-2/C	Seizure memo of marriage card of deceased Pooja.
Ex.PW-4/A	Certificate u/s 65 B IEA regarding videography of postmortem proceedings.
Ex.PW-5/A	Copy of DD No. 10A dated 28.07.2018.
Ex.PW-5/B	Copy of relevant entry in register no. 19 on 28.07.2018.
Ex.PW-5/C	Copy of relevant entry in register no. 19 on 01.08.2018.
Ex.PW-6/A	Seizure memo of mobile phone of Smt. Aarti, sister of deceased.
Ex.PW-6/B	One DVD/CD containing the voice message of deceased.
Ex.PW-7/A	Seizure memo of chunni used by deceased for hanging.
Ex.PW-7/B	Seizure memo of mobile phone of deceased.
Ex.PW-7/C	Arrest memo of accused Sudhir.
Ex.PW-7/D	Personal search memo of accused Sudhir.
Ex.PW-7/E	Disclosure statement of accused Sudhir.

6. During the trial, Ld. Counsel for accused persons moved an application u/s 311 Cr.P.C for recalling PW-8 Inspector Raj Pal Singh. The said application was allowed and PW-8 Inspector State Vs Sudhir Kumar & Anr SC No. 829/2018 FIR No.463/2018 6/28 Raj Pal Singh was cross-examined u/s 311 Cr.P.C by the Ld. Counsel for accused.

The statement of accused persons u/s 294 Cr.P.C:

7. Statement of the accused persons u/s 294 Cr.P.C was also recorded, wherein they admitted the contents and genuineness of following documents:-

- i. FIR No. 463/2018, PS Nihal Vihar (Ex.P1)
- ii. DD No. 10A dated 28.07.2018 (Ex.P2)
- iii. MLC of deceased (Ex.P3)
- iv. Rough Site plan (Ex.P4)
- v. Crime Scene Report (Ex.P5)
- vi. Photographs taken by Crime Team (Ex.P6) (collage)
- vii. Marriage photograph (Ex.P7)
- viii. Marriage card (Ex.P8)
- ix. Dead body identification statement of Dinesh (Ex.P9)
- x. Postmortem examination report (Ex.P10)
- xi. CD of postmortem examination (Ex.P11)
- xii. FSL report prepared by Dr. Jagjeet Singh and FSL report

dated 30.09.2019 (Ex.AD-X) In view of the statement u/s 294 Cr.P.C of accused, witnesses namely, HC Satish Kumar, Dr. Beena, Dr. Gursaran Maan, Dr. Mahipal Dabas, ASI Shiv Charan, Ct. Umed, Sh. Dinesh and Dr. Jagjeet Singh, Sr. Scientific Officer were dropped from the list of witnesses.

State Vs Sudhir Kumar & Anr SC No. 829/2018 FIR No.463/2018 7/28 The statement of accused persons u/s 313 Cr.P.C:

8. The statements of both the accused persons u/s 313 Cr.P.C were recorded. The incriminating circumstances appearing in evidence against the accused were brought to their notice and their explanations were sought. They denied the allegations against them and stated that parents and elder sister of deceased used to pressurize her to reside near their residence due to which deceased used to remain in stress. Further, deceased was in mental trauma, however the complainant falsely implicated accused persons in the present case in order to extort money from them. Accused persons wished to lead defence evidence. However, later on in view of the submissions of Ld. Counsel for both the accused at bar, DE was closed.

Submissions by Ld. Prosecutor:

9. Ld. Prosecutor while inviting the attention of the court towards the oral as well as documentary evidence on record argued that the prosecution has been able to prove the charges framed against the accused persons beyond reasonable doubt. He vehemently contended that the prosecution has been able to prove that the deceased had committed suicide within seven years of her marriage due to cruelty and harassment in connection with the demand of dowry committed by her mother-in-law and husband and also that soon before death of the deceased, there was a demand of dowry.

State Vs Sudhir Kumar & Anr SC No. 829/2018 FIR No.463/2018 8/28 Submissions by Ld. Counsel for accused persons:

10. On the other hand, Ld. Counsel for accused persons argued that the prosecution has miserably failed to prove the case against the accused persons beyond reasonable doubt. He argued that the prosecution has failed to show on record that soon before her death, deceased was subjected to cruelty or harassment by her mother-in-law and husband in connection with dowry. He prayed for the acquittal of the accused persons.

11. I have heard the final arguments advanced by the Ld. Addl. Prosecutor for the State and the Ld. Counsel for the accused persons.

Analysis:

12. It is settled principle of criminal jurisprudence that the prosecution has to prove the case against the accused beyond reasonable doubt and the accused has to prove its defence on preponderance of probabilities. What do we mean by the expression 'beyond reasonable doubt'?

13. The said expression 'beyond reasonable doubt' has been defined by the Hon'ble Supreme Court in the various judgments. In the judgment of Paramjeet Singh @ Pamma Vs. State of Uttarakhand, 2011CRI.L.J.663, Hon'ble Mr. Justice Dr. B. S. Chauhan, elaborated the concept of Standard of Proof in a criminal trial in the following terms:

"11. A criminal trial is not a fairy tale wherein one is free to give flight to one's imagination or fantasy. Crime is an event in real life and is the product of an interplay between different human emotions. In arriving at a conclusion about the guilt of the accused charged with commission of a crime, the court has to judge the evidence by the yardstick of probabilities, intrinsic worth and the animus of State Vs Sudhir Kumar & Anr SC No. 829/2018 FIR No.463/2018 9/28 witnesses. Every case, in the final analysis, would have to depend upon its own facts. The court must bear in mind that "human nature is too willing, when faced with brutal crimes, to spin stories out of strong suspicions." Though an offence may be gruesome and revolt the human conscience, an accused can be convicted only on legal evidence and not on surmises and conjecture. The law does not permit the court to punish the accused on the basis of a moral conviction or suspicion alone. "The burden of proof in a criminal trial never shifts and it is always the burden of the prosecution to prove its case beyond reasonable doubt on the basis of acceptable evidence." In fact, it is a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof required, since a higher degree of assurance is required to convict the accused. The fact that the offence was committed in a very cruel and revolting manner may in itself be a reason for scrutinizing the evidence more closely, lest the shocking nature of the crime induce an instinctive reaction against dispassionate judicial scrutiny of the facts and law. (Vide: Kashmira Singh Vs. State of Madhya Pradesh, AIR 1952 SC 159; State of Punjab Vs. Jagir Singh Baljit Singh & Anr. AIR 1973 SC 2407; Shankarlal Gyarasilal Dixit Vs. State of Maharashtra, AIR 1981 SC 765; Mousam Singha Roy & Ors. Vs. State of West Bengal, (2003) 12 SCC 377; and Aloke Nath Dutta & Ors. Vs. State of West Bengal, (2007) 12 SCC 230).

12. In Sarwan Singh Rattan Singh Vs. State of Punjab, AIR 1957 SC 637, this court observed (Para12) :

"Considered as a whole the prosecution story may be true; but between 'may be true' and 'must be true' there is inevitably a long distance to travel and the whole of this distance must be covered by legal, reliable and unimpeachable evidence (before an accused can be convicted.)"

14. Furthermore, in the judgment of Sucha Singh and Another Vs. State of Punjab, (2003) 7 SCC 643, the Hon'ble Supreme Court explained the term beyond reasonable doubt and observed as under:-

21. Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be

made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice according to law. [See Gurbachan Singh v. Satpal Singh and others, AIR 1990 SC 209 : 1990(1) RCR(Crl.) 297 (SC)]. Prosecution is not required to meet any and every hypothesis put forward by the accused. [See State of U.P. v.

Ashok Kumar Srivastava, AIR 1992 SC 840 : 1992(3) RCR(Crl.) 63 State Vs Sudhir Kumar & Anr SC No. 829/2018 FIR No.463/2018 10/28 (SC)]. A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some flaws inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish. [See Inder Singh and Anr. v. State of (Delhi Admn.) (AIR 1978 SC 1091)]. Vague hunches cannot take place of judicial evaluation. "A judge does not preside over a criminal trial, merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties." (Per Viscount Simon in Stirland v. Director of Public Prosecution (1944 AC (PC) 315) quoted in State of U.P. v. Anil Singh, AIR 1988 SC 1998). Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth.

15. Both the accused have been charged for the offences u/s 498A/304B/34 IPC and in alternative for the offence u/s 306/34 IPC.

16. Section 304 B which defines and provides the punishment for dowry demand, reads as under:-

"304B. 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 purpose 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."

Section 304B (1) defines 'dowry death' of a woman. It provides that 'dowry death' is where death of a woman is caused by burning or bodily injuries or occurs otherwise than under normal circumstances, within seven years of 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.

harassment by her husband or any relative of her husband, in connection with demand for dowry. Subclause (2) provides for punishment for those who cause dowry death.

17. In Major Singh v. State of Punjab, (2015) 5 SCC 201, the Hon'ble Supreme Court held the following essential ingredients of 304B IPC. The relevant observations are reproduced hereunder:-

"10. To sustain the conviction under Section 304B IPC, the following essential ingredients are to be established:

(i) the death of a woman should be caused by burns or bodily injury or otherwise than under a 'normal circumstance';

(ii) such a death should have occurred within seven years of her marriage;

(iii) she must have been subjected to cruelty or harassment by her husband or any relative of her husband;

(iv) such cruelty or harassment should be for or in connection with demand of dowry; and

(v) such cruelty or harassment is shown to have been meted out to the woman soon before her death."

18. Now, let us discuss if the prosecution has been able to prove the essential ingredients of the offence u/s 304 B IPC against the accused persons.

I. Death of a woman by burn or bodily injuries or otherwise than a 'normal circumstance':

19. The first essential ingredient for the offence u/s 304 B IPC is that the death of the woman should be caused by burns or bodily injury or otherwise than under a 'normal circumstance'. As per the postmortem report Ex.P-10 the cause of death was opined by the doctor as "asphyxia as a result of ante-mortem hanging and the manner of death as suicide". The fact that the deceased had committed suicide leaves no doubt that the State Vs Sudhir Kumar & Anr SC No. 829/2018 FIR No.463/2018 12/28 deceased had actually died by committing suicide and her death was 'otherwise than under normal circumstances'. Therefore, the first ingredient of Section 304 B IPC is satisfied.

II. The death should have occurred within seven years of marriage:

20. The second requirement to frame charge for offence u/s 304 B IPC is that the death of the woman should have occurred within seven years of marriage. From the oral testimonies of PW- 2 Sh. Sita Ram, PW-3 Savitri, the father and mother of deceased respectively as well as the statements of both the accused u/s 313 Cr.P.C as well as the other documentary evidence i.e. marriage card and the marriage photographs, it is not disputed that the deceased was married with accused Sudhir Kumar on 08.05.2017. The deceased committed suicide on 28.07.2018 i.e. within a span of one year

only. Therefore, it is proved on the record that the deceased died within seven years of her marriage. Accordingly, it is held that the second ingredient of section 304B IPC also stands proved.

III. The deceased woman must have been subjected to cruelty or harassment 'by husband or any relative of husband':

21. The third ingredient of offence u/s 304B IPC is that the deceased woman must have been subjected to cruelty or harassment by husband or any relative of husband. In the judgment of State of Punjab Vs Gurmit Singh (2014) 9SCC 632, State Vs Sudhir Kumar & Anr SC No. 829/2018 FIR No.463/2018 13/28 the Hon'ble Supreme Court discussed the previous case law on the subject and elucidated the concept of 'relative of husband' for the purpose of section 304 B IPC. The relevant observations are reproduced here as under :-(SCC page 636 and 637)

"9. It is relevant here to state that the expression "relative of the husband" has been used in Section 498-A of the I.P.C. While interpreting the said expression, this Court in the case of U. Suvetha vs. State by Inspector of Police and Anr.(2009) 6 SCC 787 held it to mean a person related by blood, marriage or adoption. Relevant portion of the judgment reads as follows:

"10. In the absence of any statutory definition, the term "relative" must be assigned a meaning as is commonly understood. Ordinarily it would include father, mother, husband or wife, son, daughter, brother, sister, nephew or niece, grandson or granddaughter of an individual or the spouse of any person. The meaning of the word "relative"

would depend upon the nature of the statute. It principally includes a person related by blood, marriage or adoption."

10. The expression relative of the husband further came up for consideration in the case of Vijeta Gajra vs. State of NCT of Delhi (2010)11 SCC 618 and while approving the decision of this Court in U. Suvetha (Supra), it was held that the word relative would be limited only to the blood relations or the relations by marriage. It is appropriate to reproduce the following passage from the said judgment:

"12. Relying on the dictionary meaning of the word "relative" and further relying on Ramanatha Aiyar's, Advance Law Lexicon (Vol.4, 3rd Edn.), the Court went on to hold that Section 498-A IPC being a penal provision would deserve strict construction and unless a contextual meaning is required to be given to the statute, the said statute has to be construed strictly. On that behalf the Court relied on the judgment in T. Ashok Pai vs. CIT (2007) 7 SCC 162. A reference was made to the decision in Shivcharan Lal Verma vs. State of M.P. (2007) 15 SCC 369. After quoting from various decisions of this Court, it was held that reference to the word "relative" in Section 498-A IPC would be limited only to the blood relations or the relations by marriage."

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11. It is well known rule of construction that when the Legislature uses same words in different part of the statute, the presumption is that those words have been used in the same sense, unless displaced by the context. We do not find anything in context to deviate from the general rule of interpretation. Hence, we have no manner of doubt that the word "relative of the husband" in Section 304 B of the IPC would mean such persons, who are related by blood, marriage or adoption."

22. In view of the aforesaid settled propositions of law, it is to be seen whether the accused persons are the husband or any relative of the husband. There is sufficient material on the record also the statement of accused persons u/s 313 Cr.P.C, to hold that accused Sudhir Kumar and Ram Sakhi are the husband and mother-in-law of deceased. Accordingly, it is held that both the accused fall within the purview of section 304B IPC. Thus, the third essential ingredient of section 304 B IPC also stands satisfied.

IV. Cruelty and harassment of the woman by husband or relative for dowry in connection with the marriage :

AND V. Such cruelty or harassment for or in connection with any demand for dowry should have taken place soon before death:

23. Now, let us discuss if the prosecution has been able to prove the aforesaid two essential ingredients or not. For the said purpose, the testimonies of PW-2, Sh. Sita Ram, PW-3, Smt. Savitri and PW-6, Smt. Aarti are relevant. They are the father, mother and sister respectively of the deceased.

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24. PW-2 Sh. Sita Ram, father of deceased, in his examination in chief, deposed that the father of accused Sudhir did not demand any dowry prior to the marriage of his daughter and the marriage was performed according to his financial capacity and there were no complaint by deceased for about one and half month. However, after about two months of marriage, accused persons started harassing his daughter and started demanding one bullet motorcycle and Rs. 60,000/- for education of accused Sudhir. PW-2 deposed that his daughter informed the said fact to his wife i.e. PW-3 Savitri. PW-2 also deposed that after 9-10 months of marriage, his elder daughter Aarti received a voice message from the deceased stating that she was very upset at her matrimonial home and when after two days Aarti alongwith her husband and brother went to the matrimonial home of deceased and enquired about the reasons of sending the said voice message, deceased told them that her mother in law had stated something to her due to which she was upset and sent the said message. PW-2 also deposed that 8-9 months after the marriage of his daughter, he went to her matrimonial home where he met the father of accused Sudhir and told him the fact that accused Sudhir had been demanding bullet motorcycle and Rs. 60,000/- and harassing his daughter. PW-2 also asked the father of accused Sudhir to sell the jewellery given by him in the marriage and fulfill

the demand of accused Sudhir whereupon father of accused assured PW-2 that he would make his son understand. PW-2 further deposed that about 8-9 months after the marriage, on one occasion, he had a telephonic conversation with accused Sudhir and told him that PW-2 had already given him whatever State Vs Sudhir Kumar & Anr SC No. 829/2018 FIR No.463/2018 16/28 he had whereupon accused Sudhir said to PW-2 that "mere ko aapse koi baat nahi karni aur mujhe to paise aur bullet chaiye"

However, he deposed that whenever he used to converse with his daughter, she would reply that she was happy in her matrimonial home.

PW-2, on being cross-examined by Ld. Prosecutor, admitted that 3-4 days prior to 28.07.2018, when had gone to the matrimonial house of his daughter, his daughter told him that both the accused used to beat her and tell her that "agar hamari mang puri nahi karwaigi mar tu sakti hai aur hamara pichha chhoot jayega". He also admitted that due to lapse of considerable time, he could not remember certain facts earlier.

PW-2 was also cross-examined by accused at great length. He admitted that accused Sudhir purchased a motorcycle about two-three months prior to the death of his daughter and the said motorcycle was bought by the accused on his own. He further deposed that 5-10 days prior to the marriage, accused Sudhir alongwith one Himanshu came to his house and demanded bullet motorcycle or money in lieu of the same. However, PW-2 admitted that no demand of dowry was directly made by accused Ram Sakhi, however, same was made through bicholiya (mediator). He also deposed that his wife told him that their daughter informed her about the demand of bullet motorcycle and Rs. 60,000/- for education of accused Sudhir. PW-2 admitted that whenever he used to go to the matrimonial home of his daughter, she would that she was happy. He also admitted that he did not state to the SDM that before the marriage, demand of State Vs Sudhir Kumar & Anr SC No. 829/2018 FIR No.463/2018 17/28 bullet motorcycle was made by accused Sudhir directly or through Bicholiya Sandeep.

25. PW-3 Smt. Savitri deposed that after marriage of deceased with accused Sudhir, for about 1½-2 months, everything remained proper, but after that her daughter started complaining about the harassment by her in-laws. PW-3 further deposed that her daughter told her that accused Sudhir had demanded a bullet motorcycle and Rs. 60,000/- for his study. She deposed that on the occasion of her marriage anniversary on 14.07.2018, her daughter and accused Sudhir visited her house and her daughter told that accused Sudhir and Ram Sakhi did not allow her to visit her parental house as they were repeatedly demanding money for purchasing bullet motorcycle.

In her cross-examination by accused, she deposed that before one week of marriage, the accused started making demands. PW-3 admitted that after marriage, her daughter was happy or that till the death of her daughter, she had never made any complaint to the police even after receipt of voice message.

26. PW-6 Smt. Aarti, who is the sister of deceased, deposed in her examination-in-chief that on 13.05.2018, she received a voice message on Whatsapp wherein her sister levelled serious allegations against accused Sudhir Kumar and Ram Sakhi.

PW-6 was cross-examined by the accused wherein she admitted that her sister never made any complaint to her parents regarding the cruelty. However, she denied that her sister was living happily with her husband and in-laws at her matrimonial house. She further admitted that there is nothing about the beatings and cruelty caused by the accused to her sister in the CD State Vs Sudhir Kumar & Anr SC No. 829/2018 FIR No.463/2018 18/28 when played in the court. She also admitted that deceased never made any compliant to her parents regarding the cruelty. She denied that her parents used to pressurize the deceased to shift nearby their house. PW-6 denied the suggestion that she had not received any voice message from deceased or that she had deposed falsely at the instance of her parents.

27. Since the prosecution is required that the cruelty or harassment in connection with demand of dowry has to take place 'soon before the death' of the woman, one needs to understand as to what the said expression means. The term "soon before death" is an elastic term and no straight jacket formula or fix criterion can be laid down. In the judgment of Kans Raj vs. State of Punjab and Ors. (26.04.2000-SC): MANU/ SC/ 0296/ 2000, the Hon'ble Supreme Court explained the term "soon before death" in the following observations:-

"14. It is further contended on behalf of the respondents that the statements of the deceased referred to the instances could not be termed to be cruelty or harassment by the husband soon before her death. "Soon before" is a relative term which is required to be considered under specific circumstances of each case and no straight jacket formula can be laid down by fixing any time limit. This expression is pregnant with the idea of proximity test. The term "soon before" is not synonymous with the term "immediately before" and is opposite of the expression "soon after" as used and understood in Section 114, Illustration (a) of the Evidence Act. These words would imply that the interval should not be too long before the time of making the statement and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In relation to dowry deaths, the circumstances sowing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be soon before death' if any other intervening circumstance showing the non -existence State Vs Sudhir Kumar & Anr SC No. 829/2018 FIR No.463/2018 19/28 of such treatment is not brought on record, before the alleged such treatment and the date of death. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the

circumstances, be treated as having become stale enough."

28. Hence, the term "soon before death" is an elastic term and it does not specify any time duration before the death of the bride. What it pre-supposes is that the demand of dowry must have been a reasonable connection or nexus with the death and the demand should have travelled for a reasonable period of time.

29. Now the prosecution is left to prove two more ingredients which are that the deceased was subjected to cruelty or harassment by the husband or his relatives for dowry in connection with the marriage and further that such cruelty or harassment must have taken place soon before the death of the deceased.

30. Having gone through the oral and documentary evidence on record, this court is of the considered opinion that the prosecution has miserably failed to prove the same due to the following reasons:-

a. As per the record, the statement Ex.Pw-1/A of PW-2 Sh. Sita Ram, the father of the deceased, was recorded on 28.07.2018. The said statement was proved as Ex.PW-1/A by the SDM. In his statement, he stated that for about one and half months, there was no demand of dowry from the accused persons. However, in his statement u/s 161 Cr.P.C dated 08.10.2018, for the first time he stated that 3-4 days before her State Vs Sudhir Kumar & Anr SC No. 829/2018 FIR No.463/2018 20/28 death, the deceased told him that the accused used to beat her in lieu of demand of dowry and both accused used to tell her that "agar hamari maang puri nahi karaege mar to sakti hai aur hamara peechna chhoot jayga". The witness, in his examination-in-chief, did not state what he stated to the police in his statement u/s 161 Cr.P.C and it was only in cross-

examination by the Ld. Prosecutor, he admitted the same. Though nothing adverse can be found regarding the same, but still his statement is not believable as the same was one of most important development which was not deposed by PW-2 in his statement Ex.PW-1/A. No reason has been assigned as to why the said important fact was not mentioned by him in his statement Ex.PW-1/A. b. PW-2 in his examination-in-chief stated that before the marriage, the father of the accused did not demand anything and he performed the marriage accordingly to his financial capacity and the problem started after one and half month of the marriage. However, in cross-examination, he stated that after 2-3 days of marriage when her daughter had come to his house alongwith accused Sudhir, he demanded from him a bullet motorcycle and Rs. 60,000/- for his education and further that he would not take the deceased back to his home. On explanation sought on two statements, he stated that his both statements were correct. The same clearly shows that the witness had improved at the time of his cross-examination from his earlier statement and thus, cannot be relied upon. c. In his statement Ex.PW-1/A, PW-2 stated that one day after one and half month of marriage, his daughter told him State Vs Sudhir Kumar & Anr SC No. 829/2018 FIR No.463/2018 21/28 that accused Sudhir had demanded a Sum of Rs. 60,000/- and a bullet motorcycle. However, in the cross-examination, he admitted that deceased Pooja had informed him about the aforesaid demand

to her mother and her mother i.e. his wife told him the same. Thus, the witness did not support his version given in his initial statement Ex.PW-1/A. d. PW-2 deposed that after 8-9 months of the marriage, he called one Sandeep and father of accused Sudhir to his house for settlement. Sandeep acted as a mediator in the marriage of his daughter. They came at his house alongwith the deceased. At that time, the father of accused received a phone call from him which was handed over to him wherein Sudhir demanded bullet and money. However, the prosecution has not produced Sandeep as a witness in this case. Therefore, there is no corroboration to the aforesaid statement of PW-2. Moreover, the aforesaid statement appears to be an improvement as there is nothing in the complaint Ex.PW-1/A in this regard. Moreover, the prosecution has not proved on record any CDR to corroborate the aforesaid deposition of the witness. e. Furthermore, PW-2 had deposed that on 14.07.2018, on the occasion of his marriage anniversary, her daughter and accused Sudhir came to his house and his daughter told him that she will not come back and when his wife inquired, her daughter stated to him that she remained busy in household work. However, in the cross-examination, he improved again and stated that her daughter stated that uske ghar me kalesh rehta hai.

State Vs Sudhir Kumar & Anr SC No. 829/2018 FIR No.463/2018 22/28 PW-3, the mother of the deceased also stated that till 1 and half months of the marriage, the things remained good, but thereafter her daughter informed her that the accused Sudhir demanded Rs. 60,000/- and one bullet motorcycle from her. She did not depose that accused Ram Sakhi demanded any dowry, but rather stated that she used to remain angry with the deceased. However, she did not depose anything about the alleged visit of her husband and her son to the matrimonial house of the deceased 3-4 days prior to the death. Therefore, the deposition of PW-2 did not find any corroboration from PW-3.

f. PW-6 Ms. Aarti is the sister of the deceased. She had placed on record a CD containing the voice message allegedly containing the serious allegations by deceased against both the accused persons. However, neither PW-2 nor PW-6 deposed about the allegations in their testimonies to prove the alleged voice message. The IO had sent two mobile phones of Karbon and Micromax make alongwith the SIM cards. However, the FSL report Ex.AD-X does not support the prosecution case as no data could be found from the mobile phones and memory cards. The mobile make Micromax could not be opened up as it was found encrypted with the pattern lock. Therefore, no scientific evidence has come against the accused on the record. g. Another important aspect is that a careful perusal of evidence of PW-2 would reveal that whenever he asked his daughter as to how she was in his matrimonial home, she used to say that she was happy and even when he went to his matrimonial home, she stated that she did not face any State Vs Sudhir Kumar & Anr SC No. 829/2018 FIR No.463/2018 23/28 problem. He further stated that even after 14.07.2018, deceased used to say that she was happy. He further stated that on 27.07.2018, at about 1/ 1.15 p.m the deceased was happy when he talked to her on the mobile phone. It is needless to mention here that the deceased committed suicide on 28.07.2018. In the cross-examination also, he admitted that whenever he had gone to the house of his daughter, she used to say that she was happy. Therefore, the same demonstrates that even one day before the death also, the deceased did not raise any incident of cruelty or harassment.

h. Furthermore, it has come on the record in the testimony of PW-2 that accused Sudhir already had two bikes before the marriage and he was employed. PW-2 also did not specify as to for what course the accused Sudhir was demanding money from him. Thus, it does not appeal to the common sense that when no demand of dowry was made before the marriage and the groom had two bikes, he would still demand another bike from his in-laws. The same is not believable. i. PW-2 also deposed that accused Ram Sakhi never demanded anything directly from him. PW-3 and PW-6 also did not depose anything against accused Ram Sakhi. Thus, no evidence has come against accused Ram Sakhi at all.

31. In view of the aforesaid circumstances, this court is of the considered opinion that the prosecution has miserably failed to prove the aforesaid two essential ingredients against the accused persons and thus, failed to prove Section 304B/34 IPC. Accordingly, accused persons stands acquitted from the offence u/s 304B/34 IPC.

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32. As far as Section 498A IPC is concerned, it is to be seen whether a married woman has been subjected to cruelty by her husband or relatives of her husband either for harassment with a view to coerce meeting a demand of dowry or willful conduct by her husband or his relative of such a nature as is likely to lead the lady to commit suicide or to cause grave injury to her life, limb or health. For the purpose of Section 498A, the cruelty can be either physical or mental.

33. To decide whether the prosecution has been able to prove Section 498A IPC, the testimonies of PW-2, PW-3 and PW-6 are important. However, none of the witnesses has deposed about any cruelty or harassment having been committed by any of the accused persons of such a nature which have been prescribed in Section 498A IPC. Rather the testimonies of all the aforesaid witnesses would show that there are no specific incidents of cruelty or harassment. None of the witnesses have deposed anything about the same. There is no evidence on the record to suggest that the accused persons willfully conducted themselves in such a manner which was likely to drive the deceased to commit suicide or to cause grave injury or danger to life, limb or health and she was harassed with a view to coerce her or any family member to meet any unlawful demand for any property or valuable security or the conduct was on account of failure by her or any person related to her to meet any such demand. Thus, this court has no hesitation in holding that not a scintilla of evidence has come on record to prove the charge u/s 498A IPC against the accused persons. Accordingly, accused persons also stand acquitted for the offence u/s 498 A IPC as well.

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34. Now remains section 306 IPC which provides the punishment for the abetment of a suicide of a person. Abetment has been defined u/s 107 IPC. It says that a person abates the doing of a thing who instigate any person to do that thing or engages with one or more persons in any conspiracy for the doing of that thing and intentionally aids, by any act or illegal commission in the doing of that thing. The prosecution case at best is covered under the first clause of section 107 i.e. of instigation only.

35. It is not necessary that the actual words must be used to that effect or what constitute instigation must necessarily and specifically be suggestive of that consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt.

36. It is also settled law that whether the person has abetted the commission of suicide of another or not is a question to be gathered from the facts and circumstances of the case and to be found out by the continuous conduct of the accused involving his mental element.

37. In Amlendu Pal vs State of West Bengal (2010) 1 SCC 707, the Hon'ble Supreme Court after considering the several earlier pronouncements held as under:-

"12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to State Vs Sudhir Kumar & Anr SC No. 829/2018 FIR No.463/2018 26/28 the commission of suicide. Merely on the allegations of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of section 306 IPC is not sustainable."

38. Now, let us see the facts of the case in view of the aforesaid propositions of law for offence u/s 306 IPC. At the cost of the repetition, again the testimonies of aforesaid PWs need to be taken into consideration. PW-2, PW-3 and PW-6 are the relevant witnesses as they are the family members of the deceased. Their testimonies have already been discussed hereinabove. The testimonies of the aforesaid witnesses do not show that the accused persons were indulged in such behaviour or conduct towards the deceased that the same could have amounted to any instigated to the commission of suicide by the deceased. There is nothing on record that deceased was pushed to the wall by the accused persons by their conduct to such an extent that there was no other alternative left to the deceased, but to commit suicide. I have already discussed the testimonies of PWs. However, there is nothing in their testimonies that the conduct of the accused led the deceased to commit suicide. Hence, no evidence to prove section 306 IPC has come on the record. Therefore, this court has no other option, but to acquit the accused persons from the offence u/s 306 IPC as well.

Conclusion:

39. In view of the aforesaid discussions, I am of the opinion that the prosecution has failed to prove charges against both the State Vs Sudhir Kumar & Anr SC No. 829/2018 FIR No.463/2018 27/28 accused persons and thus, failed to prove its case beyond reasonable doubt. Therefore, both the accused persons namely Sudhir Kumar and Ram Sakhi stand acquitted from the offences u/s 498A/304B/34 IPC and in alternative for the offence u/s 306/34 IPC as well.

40. Earlier Bail bonds of both the accused persons stand discharged. The original documents of their previous respective sureties, if any be returned to them after cancellation of endorsement and upon the identification of the sureties.

41. The bail bonds furnished u/s 437 A Cr.P.C of accused namely Sudhir Kumar and Ram Sakhi are extended for a period of six months for the purpose of Section 437A Cr.P.C. After the expiry of six months, their bail bonds shall stand cancelled and surety bonds discharged. Original documents of sureties, if any be returned after cancellation of endorsement and upon the identification of the sureties. Case property, if any be destroyed after the expiry of period of appeal.

42. File be consigned to Record Room.

Digitally
signed by
HEM RAJ
Date:
2024.12.24
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+0530
(HEM RAJ)
Addl. Sessions Judge-08 (West)
Tis Hazari Courts Delhi

Pronounced in the open
Court on 24.12.2024

State Vs Sudhir Kumar & Anr SC No. 829/2018 FIR No.463/2018 28/28