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

% *Date of decision: 09th August, 2023*

+ CRL.L.P. 299/2022, CRL.M.A. 12577/2022

STATE

..... Petitioner

Through: Mr. Tarang Srivastava learned APP
for State along with Mr. Suresh
Kumar from P.S. Usman Pur.

versus

DHEERAJ SHARMA & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. A Leave to Appeal has been sought against the judgment dated 26.02.2020 vide which the learned Additional Sessions Judge has acquitted the respondents from the charged framed under Section 498A/304B/302/34 IPC in case FIR No.374/2009.

2. The deceased Smt. Radha Rani got married to Shri Dheeraj Sharma respondent No.1 on 07.05.2009 according to Hindu customs and rites. On 16.11.2009 at about 04:40 P.M, DD No.18A was recorded on the information given by Dr. JPN Gupta CMO St. Stephens Hospital that one Radha Rani wife of Dheeraj Sharma had been brought dead to the hospital. Investigations were carried out by the Investigating Officer who collected the MLC of the deceased from the hospital. Thereafter, the Executive Magistrate recorded the statement of Shri Kalicharan, father of



the deceased who made allegations that his daughter was being harassed and were making demands of dowry from time to time and suspected that she had been killed by her in laws. On the recommendations of the Executive Magistrate, the FIR was registered. During the investigations, post mortem of the deceased was got done and the statements of the father and brother of the deceased were recorded, aside from other witnesses. The post mortem of the deceased was got done and the Report was collected. The opinion of the Doctor as to cause of death was obtained. On completion of investigations, charge sheet was filed in the Court.

3. **Charges under Section 304B/498A/302/34 IPC** were framed against the respondents who were the husband, father-in-law, mother-in-law and sister-in-law of the deceased.

4. In all fifteen witnesses were examined by the prosecution in support of its case. The statements of four respondent were recorded under Section 313 Cr.P.C wherein they pleaded their innocence.

5. Respondent No.1 Sant Ram examined two witnesses in defence as his alibi to prove that he was not even present in the house at the time of the incident.

6. The learned ASJ after appreciating the entire evidence concluded that the prosecution was not able to establish that there were demands of dowry “soon before the death”. Moreover, in the Post Mortem Report the cause of death was opined as “Asphyxia as a result of compression of the neck by a ligature” and in the subsequent opinion the Doctor opined that it could not be determined whether the death was suicidal or homicidal. Learned ASJ thus, concluded that the prosecution has not been able to prove its case beyond reasonable doubt and acquitted the respondents.



7. Aggrieved by the said acquittal the present Leave to Appeal has been filed. The main grounds are that the learned ASJ has failed to appreciate the evidence on record in a judicious manner and the acquittal is based on conjectures and surmises. The benefit of doubt that has been given, is not based on factual matrix. The direct evidence coupled with scientific evidence in the form of FSL and Post Mortem Report has not been appreciated properly. **PW8 Shri Kalicharan Sharma** the complainant/ father of the deceased had fully supported the case of the prosecution to prove the deceased had been subjected to cruelty and harassment on account of dowry. **PW9 Shri Vinod** brother of the deceased has also fully supported the case of the prosecution. Moreover, the MLC and the Post Mortem Report clearly established that it was a case of unnatural death. Under Section 113 B of Indian Evidence Act, 1872 there is a presumption as to the dowry death and the onus was on the respondents to prove their innocence which they have miserably failed to do. In support of the contentions, the State has placed reliance on Inder Singh & Anr. vs. The State 1978 AIR 1091, State of U.P. vs. Krishna Gopal & Anr. (1988) 4 SCC 302, Yogesh Singh vs. Mahabeer Singh & Ors. decided by the Apex Court on 20.10.2016, Kashmir Kaur & Anr. vs. State of Punjab, AIR 2013 SC 1039, Raj Kumar Singh @ Raju vs. State of Rajasthan (2013) 8 SCR 599.

8. **Submissions heard.**

9. The case of the prosecution is that Shri Kalicharan in his statement before the SDM which is Ex.PW8/A had stated that the accused persons used to demand dowry and the accused Dheeraj husband of the deceased used to threaten that he would leave the daughter. He expressed his doubt



that the daughter has been killed by the accused persons. However, no specific allegations of dowry demand or of subjecting the deceased to harassment by the husband or family members was given. Admittedly, no complaint was ever made to the police or to any other Authority or person about the alleged harassment of the deceased. The learned ASJ also noticed the improvements made by PW8 Shri Kalicharan in his testimony in the Court, wherein he had made additional allegations of there being a regular demand of money, of being beaten and or not being given proper food. PW8 had also deposed that he had given a washing machine and a gold chain to the accused Dheeraj after the marriage, but he admitted that these facts had not been stated in the statement made before the SDM. Likewise, PW9 Shri Vinod Kumar brother of the deceased though made similar allegations of dowry demand and harassment of his sister in his statement under Section 161 Cr.P.C admitted that he was not aware as to when and who made the dowry demands or what were the demands raised and in what manner the deceased was harassed or beaten by the accused persons.

10. The learned ASJ thus concluded from the testimony of the two material witnesses namely PW8 Shri Kalicharan and PW9 Shri Vinod that neither the complainant nor any other family member ever made any complaint against the accused and his family about the alleged cruelty and harassment on account of dowry. In the absence of the essential ingredients, the requisite incidents of 304B IPC as well as of 498A IPC were not held to be made out. We find that learned ASJ after appreciating the Prosecution Evidence has rightly come to the conclusion that in the absence of conclusive evidence of cruelty or dowry harassment, there can



be no conviction under Section 498A/ 304B IPC.

11. In regard to the charges under **Section 302/34 IPC**, the Post Mortem Report opined the cause of death as “Asphyxia as a result of compression of the neck by a ligature”. Subsequent opinion was given by PW15 Doctor Meghali Kelker, Sr. Demonstrator, Deptt. of Forensic Medicine, wherein she stated that no opinion can be given whether the death was suicidal or homicidal which depends upon the circumstantial evidence for which the investigations may be carried out by the Investigating Officer. Interestingly, the subsequent opinion has not been proved by Dr. Meghali Kelker but by PW7 Inspector K.P. Singh who was the subsequent I.O. who carried out the investigations. The only incriminating fact which could be brought on record was that the death was due to Asphyxia, but there was no cogent evidence to establish whether the death was homicidal or suicidal. The onus of proving the unnatural death as being homicidal rested absolutely on the prosecution which they have miserably failed to discharge. The learned ASJ has rightly granted benefit of doubt to the accused persons.

12. Before concluding, we may observe that in the present case, the investigations have been carried out by the police in the most casual manner and have not even bothered to investigate whether the death was natural or homicidal despite the opinion of the Doctor. PW15 Dr. Meghali Kelker had recorded in the Post Mortem Report Ex.PW15/A that there were as many as six external injuries. She had explained that the injuries No.1 to 5 mentioned in the Post Mortem Report were simple in nature and were not possible due to fall; especially Injury No.2 which was a lacerated wound on the gums of upper jaw and scratch abrasion



measuring 0.1 X 0.1 cm on the left ramus of mandible. It was also observed that the Hyoid bone, thyroid cartilage and cricoid bone were intact. She had also explained that injuries were fresh and ante mortem. Moreover, “the **absence of ligature** marking for 10 cm on the left side of the neck and absence of **deep ligature** marking” may suggest it to be a “homicidal death”.

13. The ante mortem injuries and the Post Mortem Report clearly pointed out that it may be a case of homicidal death despite which the Investigating Agency has not even made any effort to conduct thorough investigations to ascertain the actual cause of death. An extreme casual approach has been adopted despite the fact that she was a young girl of barely 23 years of age who lost her life to an unnatural death and that too within six months of her marriage. Such kind of indifference and lackadaisical investigation by the Investigating Agency is highly deprecated.

14. In view of the above, we found no ground for grant of Leave to Appeal. The same is hereby dismissed.

15. The pending application also stands disposed of accordingly.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 09, 2023

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