

Rupesh Kumar Vs. State

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Court : Delhi

Decided On : Sep-25-2013

Judge : Sunita Gupta

Appellant : Rupesh Kumar

Respondent : State

Advocate for Def. : Ms. Fizani Husain

Advocate for Pet/Ap. : Mr. Ajay Verma, Mr. Udayan Tandon

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.A. No.371 of 2000
Date of Decision:

25. h September, 2013 RUPESH KUMAR Appellant Through: Mr. Ajay Verma and Mr. Udayan Tandon, Advocates. versus STATE Respondent Through: Ms. Fizani Husain, APP for the State. CORAM: HONBLE MS. JUSTICE SUNITA GUPTA

JUDGMENT

:SUNITA GUPTA, J.

1. This is an appeal against the judgment dated 23rd May, 2000 and order on sentence dated 25th May, 2000 in Session Case No.13/96 arising out of FIR

No.126/92 under Sections 498A/304B/34 IPC registered at Police Station Seelampur, vide which the appellant was convicted for offence punishable under Sections 306 and 498A of the Indian Penal Code, 1860 while co-accused Brij Devi was acquitted of the charges levelled against her. Appellant Rupesh Kumar was sentenced as under: (i) Rigorous imprisonment of five years and fine of Rs.2,000/under Section 306 IPC and in default of payment of fine, to undergo rigorous imprisonment for six months; and (ii) Rigorous imprisonment of two years and a fine of Rs.1,000/- under Section 498A IPC, in default to undergo rigorous imprisonment for three months.

2. The sentences were to run concurrently and the convict was entitled for the benefit of Section 428 Cr.P.C.

3. Police machinery was set in motion on receipt of information by ASI Sarita (PW10) from an unknown person that one lady received burn injuries at CPJ Block No.1/44, New Seelampur, on the basis of which she recorded DD No.9A dated 04 th March, 1992 Ex.PW10A which was assigned to SI Om Prakash (PW-13) for investigation. SI Om Prakash along with Ct. Kishan Lal went to the place of incident where he came to know that a woman got burn injuries and she has been removed to JPN hospital. After leaving Ct. Kishan Lal at the spot, he went to JPN hospital. In the MLC, the doctor declared the patient unfit for statement. Crl. Appeal. 371/2000 Magistrate was informed. SI Om Prakash returned back to the spot, inspected the spot and got it photographed. One stove, one kerosene oil can of plastic white colour and burnt clothes were found present which were taken into possession vide Ex. PW13A. At about 2.30 a.m., information was received from Duty Constable JPN hospital regarding death of Smt. Sheela on the basis of which DD entry Ex.10/C was recorded. SDM completed the inquest proceedings under Section 176 Cr.P.C and post mortem was got conducted. SDM recorded the statement of Sh. Mangli, father of the deceased and Smt. Premwati, mother of the deceased wherein they disclosed that they got Sheela married with Rupesh Kumar about two years ago. Whenever Sheela used to come to their house, she used to demand Rs.2,000/- - Rs.4,000/- and used to inform that she was being harassed by her in-laws for bringing more money and that in case she is not able to bring the same, then they will leave her. Sheela used to be beaten on account of

insufficient dowry and she used to be tortured. Once Rupesh and Brij Devi, mother of Rupesh, came and demanded Rs.10,000/- for marriage of his sister, Yamuna. Family of the deceased could not fulfil the demand due to financial constraints because of which they started torturing her. Ultimately, Sheela was set on fire by her husband Rupesh, her mother-in-law and her sister-in-law and they prayed for action against them. One complaint was also given by brother of the deceased to SDM. SDM ordered registration of the case. Thereupon FIR was registered. During the course of investigation, accused Brij Devi and Rupesh were arrested. After completing investigation, charge-sheet was submitted against them under Sections 498A/304-B IPC. Charge for offence under Sections 498A/304B/34 IPC was framed against both the accused to which they pleaded not guilty and claimed trial.

4. In order to substantiate its case, prosecution examined 16 witnesses. In their statement recorded under Section 313 Cr.P.C, both the accused pleaded innocence. It was alleged that the relation between Rupesh and Ajay, brother of the deceased, were inimical. The deceased caught fire from the stove, which fact finds mention in the MLC prepared by the doctor. They did not prefer to lead any defence evidence.

5. Vide impugned order, learned Additional Sessions Judge came to the conclusion that offence under Section 304-B IPC is not proved against any of the accused as it could not be proved that soon before her death, the deceased was subjected to cruelty or harassment. So far as Brij Devi is concerned, the allegations qua her were not proved beyond reasonable doubt. That being so, she was acquitted of both the charges. However, it was held that there are specific allegations against accused Rupesh. The unnatural death of the deceased had taken place within seven years of marriage, as such a case for abetment to suicide under Section 306 and subjecting her to cruelty under Section 498A IPC is proved beyond reasonable doubt and accordingly he was convicted for these offences and sentenced as stated above. Aggrieved by the aforesaid orders, present appeal has been preferred.

6. It was submitted by learned counsel for the appellant that on the basis of same evidence, Brij Devi, mother-in-law of the deceased, has been acquitted but without appreciating the evidence in the correct perspective, Rupesh Kumar was convicted only on the basis of suspicion. When the deceased was taken to hospital, history was given that she got burn injuries while cooking on stove. The incident had taken place at about 10 a.m whereas she died during night. Till her death, there was no allegation of harassment or demand of dowry. It was only after her death that brother of the deceased went to SDM and gave an application. Thereafter, statement of parents of the deceased were recorded and even then the SDM had only ordered registration of FIR under Section 498A IPC. However, the SHO of his own, made the endorsement for registration of case under Sections 498A/304 B IPC. Even the FIR was not recorded immediately and the same was recorded after a great delay on 5th March, 1992 at about 5.15.p.m Reference was made to the testimony of the prosecution witnesses and it was submitted that the same suffers from contradiction and material improvements. Moreover, PW-2 Mangli has even denied that his statement was recorded by SDM and he denied his thumb impression on statements Ex.PW1/B & Ex.PW1/C. Witnesses have deposed that prior to the death of deceased, her brother Mahipal had visited her and informed about the harassment. However, he has not been examined by the prosecution. Moreover, as per MLC, the injured was taken to hospital by Reva Ram, although he was cited as witness but was not examined. The prosecution has withheld material witnesses, as such adverse inference has to be drawn against them. It was further submitted that the appellant was exonerated of the charge under Section 304B IPC as cruelty was not proved. However, he was convicted under Section 306 IPC but in order to establish this offence, it was incumbent upon the prosecution to prove that the deceased committed suicide. However, there is no material on record to prove the factum of suicide. In fact, it was an accidental death and even the Investigating Officer of the case admitted that he came to know that deceased sustained burn injuries while cooking on stove. Moreover, there are no allegations of abetment to commit suicide. That being so, no offence under Section 306 IPC is made out. Even the allegations fall short of proving the essential ingredients of Section 498A IPC, as such appellant is entitled to be acquitted of both the charges. Reliance was placed on Wazir Chand

and Another v. State of Haryana, (1989) 1 SCC244 Baldev Raj v. Chanderprakash & Ors, ILR(2008) I Delhi 313 and Kantilal Martaji Pandor v. State of Gujarat & Anr, 2013(9) SCALE560 7. Per contra, it was submitted by Ms. Fizani Hussain, learned Additional Public Prosecutor for the State that the statement of parents of the deceased were recorded by the SDM wherein they levelled allegations against the accused regarding cruelty and harassment to her on account of demand of dowry. Thereafter, SDM wrote two letters, one to SHO for registration of case under Section 498A IPC and another to hospital authorities for conducting postmortem of the body of deceased Sheela suspecting foul play. Thereafter, case under Sections 498A/304-B IPC was registered. It was further submitted that it was not a case of accidental death because, had Sheela been burnt by stove the kerosene oil would not have reached upto her hair which was detected by the doctor who conducted post mortem examination and also by the forensic expert when the exhibits were sent to FSL. Moreover, in the kitchen, stove was found intact. There was no sign that Sheela sustained burn injuries while working on stove. No adverse inference can be drawn from non-examination of Reva Ram, inasmuch as, if he was not examined by the prosecution, the accused could have examined him in defence. It was submitted that the impugned order does not suffer from any infirmity which calls for interference, as such appeal is liable to be dismissed.

8. We have given our anxious thoughts to the respective submissions of learned counsel for the parties and have perused the record.

9. In order to substantiate its case, the material witnesses examined by the prosecution are: father of the deceased PW2 Mangli, brother of the deceased PW3 Ajay Pal Singh and mother of the deceased PW4 Premwati.

10. PW2 Mangli has deposed that Sheela, his daughter, was married to Rupesh Kumar about six years back according to Hindu rites. Sheela lived happily in her matrimonial house for about one year. Thereafter, she used to be harassed by her husband Rupesh, his mother, sister and brother. They used to demand scooter and also money amounting to Rs.10,000/- and threatened to kill her on her failure to bring that money. He gave a sum of Rs.3,000/-, Rs.2,000/and Rs.1,000/- on three different occasions besides sending wheat to her daughter. Her daughter

used to inform him about the harassment being caused by her husband and his other family members. Panchayat was also held and in the proceedings before the Panchayat Rupesh Kumar and members of his family gave in writing that they will not harass his daughter any more. His son Mahipal met his daughter about one month prior to her death. At that time Sheela had informed Mahipal that she was being harassed and that demand of Rs.3,000/- is being made. Mahipal, in turn, informed him about this fact on which he sent him again to the house of his daughter informing that they will do according to their status in the marriage of sister of Rupesh. After one month, he came to know that his daughter has been burnt to death. He went on stating that his daughter was burnt on account of dowry.

11. PW3 Ajay Pal Singh corroborated the testimony of his father Mangli by deposing that at the time of marriage of his sister Sheela with Rupesh in May, 1990, sufficient money was given according to their status. After one year of the marriage, his sister started making complaints about harassment caused by her husband-Rupesh, mother-in-law, sister-in-law and brother-in-law. She also used to complain that accused persons used to beat her and demanded more and more money. She also told him that they were demanding Rs.10,000/otherwise she would be killed and she will have no place in their house. Many a times, he tried to patch up the matter. He also gave cash of Rs.500/- some times to accused Rupesh and sometimes to his mother. He also gave wheat to the accused persons. The behaviour of the accused persons remained good for some time after receiving cash and wheat, but after 2-3 months they again started harassing his sister by giving beatings to her.

12. On 22nd November, 1991 he went to the house of the accused persons to meet his sister where he saw that accused persons were giving beatings to his sister. He lodged DD No.23 in Police Station Seelampur. The matter was compromised on 23rd November, 1991. After the death of his sister, he gave a complaint Ex.PW3/B to SDM on 5th March, 1992. In regard to some facts, the witness was cross-examined by learned Additional Public Prosecutor for the State and he admitted that in his complaint to SDM he had stated that on 18th November, 1991 his sister Sheela was beaten and on coming to know about this

fact he went to her house and accused told him Ya To Paise Do Ya Hum Ise Jaan Se Maarenghe and he brought back his sister from her matrimonial home on 22nd November, 1991. He also admitted that on that very day, he lodged a report vide DD No.23 in Police Station Seelampur. CrI. Appeal. 371/2000 persons came to his house and after compromise they took her away to their house. He admitted that Ex.PW3/DA is copy of the compromise arrived at on that day wherein the accused had agreed not to harass and beat Sheela in future and that he will be responsible if he do so again.

13. He also admitted that in the complaint made to SDM he stated that Sheela was turned out from her matrimonial house after some days and she was again taken back by the accused on 5th February, 1992; his brother Mahipal Singh had gone to see his sister on 26th February, 1992 and Sheela informed him that the accused persons used to beat her and asked her to bring Rs.3,000/- and that her life was in danger.

14. PW4 Premwati, mother of the deceased, has corroborated the version given by her husband and son by deposing that Sheela lived happily in her matrimonial home for one year and thereafter she used to inform that she was being harassed by her husband, brother-in-law and sister-in-law. She was not given proper food. She also informed that the accused person demanded money, anaj, etc. Sometimes she gave Rs.500/- and sometimes Rs.1000/-. CrI. Appeal. 371/2000 incident accused Rupesh and deceased visited their house and demand of Rs.10,000/- was made for marriage of sister-in-law of the deceased. However, they could not fulfil the demand. Thereafter, accused Rupesh and deceased went back and Sheela died after 10-15 days. This witness was also cross-examined by learned Additional Public Prosecutor and she admitted that she had stated to the Magistrate that Sheela had informed her that her in-laws threatened her to expel from matrimonial home if she was unable to bring money from her parents and that Rupesh, Yamuna and Brij Devi came to her house for demand of Rs.10,000/- and when they could not fulfil the demand Sheela used to be harassed. She admitted that her thumb impression is on her statement Ex.PW1/D. According to her, Sheela has been killed by her husband Rupesh, Yamuna her sister-in-law, and Brij Devi her mother-in-law by burning her.

15. As such, parents and brother of the deceased have consistently deposed regarding harassment caused to Sheela on account of demand of money.

16. Learned counsel for the appellant submitted that there are some inconsistencies in the statement of witnesses regarding the precise nature of the amount demanded, however, the inconsistencies are of little importance considering the volume of evidence showing that repeated demands were made for money from Sheela, her parents and her brother. m that on 22nd November, 1991 Sheela was given beatings. When PW3 Ajay Pal Singh reached house of Sheela, he was informed by the accused that in case their demands are not fulfilled then she will be killed. He went to Police Station Seelampur, lodged DD No.23. Thereafter, the matter was compromised and accused took her back after giving assurance that such things will not be repeated in future. The factum of compromise is not disputed by accused. In cross-examination, the accused produced photocopy of the compromise deed Ex.PW3/DA in order to show that date is mentioned as 21st November, 1991 and not 23rd November, 1991. Although there is some variation in the date, inasmuch as, in compromise Ex.PW3/A date is mentioned as 23rd November, 1991 whereas in the photocopy Ex. PW3/DA, date is mentioned as 21st November, 1991. The fact remains that as per this compromise there is an averment that Ajay Pal Singh had lodged complaint to the police regarding giving of beatings to his sister Sheela by her husband. He further went on stating that the matter had been compromised and he does not want any legal action against him. Sheela also mentioned that she would come back within 15-20 days in case Rupesh will come to take her and they will keep her well and will not beat her. Accused Rupesh also gave assurance that he will keep his wife properly and in case of harassment he will be responsible.

17. Under the circumstances, irrespective of the fact whether the compromise took place on 21st November, 1991 or 23rd November, 1991, the fact remains that as beatings were given by Rupesh Kumar, DD was lodged by Ajay Pal Singh and, thereafter, the matter was compromised on the assurance given by Rupesh Kumar. As such, the physical cruelty meted out to the deceased stands proved. Furthermore, there is also substantial evidence to show that an amount of Rs.10,000/- was demanded for the marriage of nanad of Sheela which her parents

and brother were unable to fulfil. Besides this, there was continuous demand for more money and wheat which used to be fulfilled by her family members from time to time. As such, there is no reason to disagree with the conclusion arrived at by learned Additional Sessions Judge in this connection and therefore the conviction of the appellant under Section 498A of Indian Penal Code and sentence imposed upon him is confirmed. The acquittal of co-accused on same set of evidence does not come in the way of confirmation of conviction of the appellant inasmuch as, there is ample evidence available on record qua him. In *Bable @ Gurdeep Singh Vs. State of Chhattisgarh*, (2013) 1 SCC (Cri) 417 and *Surajit Sarkar Vs. State of West Bengal*, (2013) 2 SCC 146 it was held that merely because other accused were acquitted, cannot absolve appellant in view of cogent and reliable evidence appearing against him.

18. As regards acquittal of accused under Section 304 B IPC is concerned, at the outset, it may be mentioned that neither the State nor the Complainant has come in appeal against the order of acquittal. Moreover, in order to attract this Section, it is incumbent upon the prosecution to prove: (i) The accused has committed dowry death of a woman; (ii) The woman was subjected to cruelty or harassment by her husband or his relatives. (iii) Such cruelty or harassment was for or in connection with any demand for dowry. (iv) Such cruelty or harassment was soon before her death.

19. In dowry death cases and in most of such offences, direct evidence is hardly available and such cases are normally proved by circumstantial evidence, as such, this section has to be read with Section 113B of the Evidence Act which includes the rule of presumption i.e. if death occurs within seven years of marriage in suspicious circumstances then the Court shall presume that it is dowry death. However, before raising this presumption it is obligatory on the part of the prosecution to establish essential ingredient of Section 304B IPC as referred above. Although, in the instant case, it was proved that the deceased met with an unnatural death within seven years of her marriage, inasmuch as, the marriage had taken place in May, 1990 whereas the date of death of the deceased is 4 th March, 1992, it has also been proved that the deceased was subjected to cruelty or harassment by her husband, however, the other essential ingredient was that

such cruelty or harassment was soon before her death. As per the testimony of all the three material prosecution witnesses, prior to the death of Sheela, Mahipal, her brother had gone to meet her and at that time Sheela had informed him that she was being harassed and that demand of Rs.3,000/- is being made. Ajay Pal went a step further by deposing that Sheela informed Mahipal that there was danger to her life and accused persons were greedy of money. Within few days, Sheela met with an unnatural death. As such, Mahipal was a material witness in order to prove that soon before her death Sheela was subjected to cruelty and her life was in danger, but for reasons best known to prosecution Mahipal Singh was not examined as a witness. Under the circumstances, learned Additional Sessions Judge acquitted the accused under Section 304B IPC as prosecution failed to establish one of the essential ingredients. As stated above, State has not come in appeal, as such, this issue is not required to be dealt with any further.

20. The only issue that remains to be considered is whether the trial Court was right in convicting the appellant under Section 306 IPC.

21. We would firstly deal with Section 306 of the Code which deals with abetment of suicide which reads as under:

306. Abetment of suicide.-- If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

22. The word suicide in itself is nowhere defined in the Indian Penal Code, however, its meaning and import is well known and requires no explanation. Sui means self and cide means killing, thus, implying an act of self-killing. In short a person committing suicide must commit it by himself, irrespective of the means employed by him in achieving his object of killing himself.

23. Next we will deal with Abetment of a thing as has been defined under Section 107 of the Code. We deem it appropriate to reproduce Section 107 which reads as under:

107. Abetment of a thing.- A person abets the doing of a thing, who First-Instigates any person to do that thing; or Secondly- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly Intentionally aids, by any act or illegal omission, the doing of that thing.

24. These sections have to be read with Section 113A of Indian 113A. Presumption as to abetment of suicide by a married woman.- When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband. Explanation.-- For the purposes of this section," cruelty" shall have the same meaning as in section 498A of the Indian Penal Code, 1860.

25. Learned counsel for the appellant rightly did not raise any objection for invoking Section 306 IPC even though no charge under this Section was framed.

26. In K Prema S. Rao and Anr. v. Yadla Srinivasa Rao and Ors. JT20028) SC502 charge was framed for offence under Section 304B IPC and Section 498A IPC. However, Honble Supreme Court held even though the charge had been framed under the aforesaid sections, if the evidence was sufficient, the husband could be convicted under Section 306 IPC for abetment of suicide of his wife. The Supreme Court held that the acquittal of the husband of the offence under Section 304B IPC was correct in the absence of any demand of dowry but the willful conduct of the husband forcing the wife to part with her stridhan and for that purpose concealing her postal mails was so cruel that she was driven to commit suicide and, therefore, a clear case of conviction under Section 306 IPC was made out. The Supreme Court also observed that mere omission on the part of the trial court to mention Section 306 IPC at the time of framing of charges did not preclude a court from convicting the accused for the said offence when found

proved. It was in the alternate charge framed under Section 498A IPC, that it had been clearly mentioned that the accused subjected the deceased to such cruelty and harassment so as to drive her to commit suicide. The Supreme Court held that the provisions of Section 221 of the Code of Criminal Procedure, 1973 were sufficient to enable a criminal court to convict an accused for an offence with which he was not charged, although on facts found in the evidence, he could have been charged for such offences. The Court also held in the facts of the case that the omission to frame a charge under Section 306 IPC had not resulted in any failure of justice and, therefore, Section 215 of the Code of Criminal Procedure, 1973 permitted the trial to ignore any error committed at the time of framing of the charge.

27. This view was followed in *Baldev Raj v. Chander Prakash and Ors.* ILR (2008) I Delhi 313 relied upon by learned counsel for the appellant.

28. The crucial question, however, remains as to whether essential ingredients of Section 306 IPC are proved or not. As observed by Honble Supreme Court in *Wazir Chand and Anr. v. State of Haryana* (1989) 1 SCC244 in order that a person can be convicted of abetting the suicide of any other person, it must be established that such other person committed suicide. This view was reiterated in *Baldev Raj* (supra) and it was held that commission of suicide is a pre-condition for invoking the offence of abetment of suicide or for raising the presumption under Section 113A of the Evidence Act.

29. A perusal of evidence led by the prosecution goes to show that although it is not in dispute that the death of Sheela was an unnatural death, but it is nobodys case that she committed suicide. Rather, it is the case of prosecution itself that when Sheela was brought to hospital, her MLC Ex.PW6/A was prepared by Dr. Seema where it is recorded:

alleged history of burns, caught fire from stove.

30. Death summary Ex.PW6/B was prepared by Dr. Rajiv Bhatt which recorded:

alleged history of sustaining burn injuries all over the body while working on kerosene stove on 4th March 1992 at 10:00 a.m. as stated by patient herself.

31. As per MLC, Sheela was brought to hospital by Rewa Ram, however, prosecution has failed to examine this witness, despite the fact that he was cited as a witness. According to the Investigating Officer of the case, he did not feel it necessary to record the statement of Rewa Ram on the day of incident as he was related to accused. He admitted that accused were resident of CPJ Block No.C-1/44 Seelampur while Rewa Ram was resident of CPJ Block No.C-1/55 New Seelampur and except the bare averment that he was relative of accused, the same has not been substantiated. Even if it is taken that he was relative of accused, that ipso facto does not raise any presumption that he would not have revealed the truth. He was a very crucial witness as, as per the MLC, he brought the deceased to the hospital and therefore he would have been in a position to throw light as to how Sheela sustained burn injuries. For non-examination of this witness, an adverse inference has to be drawn against the prosecution. The submission of learned APP for the State that even if, prosecution failed to examine this witness, the accused could have examined him in defence, has no legs to stand because it is cardinal principal of criminal jurisprudence that burden of proof is squarely on prosecution to prove its case beyond reasonable doubt. Even the prosecution cannot take recourse to Section 113A of the Evidence Act as it provides that under certain conditions the Court may presume having regard to circumstances of the case that such suicide had been abetted by her husband or relatives. When the law provides that the Court may presume a fact, it is discretionary on the part of the Court either to regard such fact as proved or not to do so and it depends upon all the other circumstances of the case. Moreover, before invoking this presumption, it has to be established by the prosecution that Sheela committed suicide. As stated above, it was nobodys case, either of prosecution or accused that it was a case of suicide. In fact, according to accused, it was a case of accidental death which finds support from MLC and death summery, however, parents and brother of the deceased were trying to set up a case that Sheela was set on fire by her husband and relatives, which was not even the case of prosecution as the charge sheet itself was not filed under Section 302 IPC and investigation also did not reveal that Sheela was set on fire by the

accused.

32. Learned APP for the State, however, tried to set up a case of suicide from post-mortem report ExPW12/A conducted by Dr.Satish Kumar on the body of the deceased and as per his deposition, on examination he found following external injuries:

(i) Dermo epidermal burns present all over the body except soles. Cuticle peeled off at places. Base shows reddening specially over margins. Unpeeled areas shows blackening. (ii) Scalp hair singed and burnt over frontal and both temporal and occipital regions. Kerosene oil like smell appreciated at the time of post-mortem examination. Eye brows, eye lashes, axillary and pubic hair all burnt and singed. Approximate area of burns 98 per cent.

33. There was smell of kerosene oil when post-mortem was conducted. Scalp hair of the deceased was handed over by the doctor to the Investigating Officer of the case who seized the same vide memo Ex.PW13/E. One stove, one kerosene oil cane of plastic white colour and burnt clothes were taken into possession vide Ex. PW13A. Same were sent to FSL and were examined by Sh. N.K. Prasad, Senior Scientific Officer (PW16) who gave his report Ex.PW16/A, according to which, scalp hair showed the presence of kerosene residue. It was submitted that if it had been a case of accidental death kerosene oil could not have reached scalp hair of the deceased and the fact that on the scalp hair, kerosene was detected itself proves that the deceased must have committed suicide. The submission of learned APP for the State may raise a doubt whether it was the case of accidental death or Sheela committed suicide by pouring kerosene oil on herself but it is well established cannon of criminal jurisprudence that suspicion howsoever grave, cannot take the place of proof.

34. It is also worth mentioning that after Sheela succumbed to injuries, Sh. R.K. Mishra, SDM recorded statement of parents of deceased Ex.PW1/B and PW1/D wherein they gave a detailed account of harassment to their daughter, constant demand of money and raised suspicion that accused and his family members must have killed her. The brother of the deceased Ajay Pal Singh gave a typed complaint Ex.PW3/B to the SDM narrating these facts. Despite that, SDM directed

SHO to register a case under Section 498A of IPC only. It seems that initially SHO also directed Duty Officer to register a case under Section 498A IPC but later on Section 304B IPC was added. Despite the fact that Sheela sustained burn injuries at 10:00 a.m. on 4th March, 1992 and died at 11:55 p.m. on the same day, the statement of Mangli, father of the deceased was recorded at 1:08 p.m. and that of Premwati, mother of the deceased, was recorded at 1:05 p.m. on 5th March, 1992, SDM had sent all the papers to SHO by 2:00 p.m. yet FIR came to be registered only at 5:15 p.m. The reason assigned for delay in recording FIR is attributed to business of SHO in some other work, which is hard to believe. Absolutely no satisfactory explanation is given for delay in recording FIR. It has been emphasised time and again that FIR should be lodged promptly before there is any chance of manipulation and in case no satisfactory explanation is forthcoming then the same is shrouded with doubt. In the instant case, as stated above, absolutely no satisfactory explanation has been given for delay in registration of FIR.

35. Learned Additional Sessions Judge convicted the appellant under Section 306 IPC by merely observing that the death has taken place in suspicious circumstances. Since cruelty stands established, the circumstances show that deceased was compelled to commit suicide. No finding has been given that the deceased has committed suicide or accused abetted commission of the same. Merely because the deceased was subjected to cruelty, no presumption could be drawn that she committed suicide, more particularly so, when it was neither the case of prosecution nor of the accused. In the absence establishing that Sheela had committed suicide, the finding regarding Section 306 IPC cannot be sustained. Same is accordingly set aside.

36. The appeal is partly allowed, so far as, conviction under Section 306 IPC and sentence imposed therein is concerned. The appeal against conviction under Section 498A IPC is dismissed.

37. The appellant is on bail. He is directed to surrender to police within seven days and undergo the balance of his sentence, if any, and also pay the fine imposed on him for conviction under Section 498A, if not already paid.

38. The appeal stands disposed of accordingly. Trial Court record be sent back forthwith. SUNITA GUPTA (JUDGE) SEPTEMBER25 2013 as/AK

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