

Rakesh Etc. Vs.state

Rakesh Etc. Vs.state

SooperKanoon Citation : sooperkanoon.com/1220635

Court : Delhi

Decided On : Jan-15-2019

Appellant : Rakesh Etc.

Respondent : State

Advocate for Pet/Ap. : Ms. Aashaa Tiwari

Judgement :

* + IN THE HIGH COURT OF DELHI AT NEW DELHI CRL.A. 298/2004 Reserved
on :

28. 11.2018 Date of Decision :

15. 01.2019 IN THE MATTER OF: RAKESH ETC. STATE Through : Mr. H. P. Aditya, Advocate. Versus Through : Ms. Aashaa Tiwari, APP. Appellants Respondent CORAM: HON'BLE MS. JUSTICE HIMA KOHLI HON'BLE MR. JUSTICE MANOJ KUMAR OHRI MANOJ KUMAR OHRI, J.

1. The present appeal arises out of the judgment on the conviction dated 24.03.2004 and the order on the sentence dated 27.03.2004 in Sessions Case Nos. 03/2003 and 68/2003 in FIR No.604/2002 under Sections 498A/304B, P.S. Uttam Nagar registered at the instance of the complainant, Bhure Ram, father of the deceased, Anju.

2. Appellant No.1 Rakesh, is the husband of the deceased, appellant No.2 Ram Lakhan, is the father-in-law of the deceased, appellant No.3 Raj Kumar, is the brother-in-law (jeth) of the deceased, appellant No.4 Somwati (wife of appellant No.3) is the jethani of the deceased and the appellant No.5, Somwati (wife of appellant No.2), is the mother-in-law of the deceased. All the appellants have been convicted for the offences punishable under Sections 498A/304B IPC and have been sentenced to undergo imprisonment for life under Section 304B. They have been further Crl.A.298/2004 Page 1 of 20 sentenced to undergo RI for 2 years under Section 498A and to pay a fine of Rs.1,000/- each, and in default, they have been directed to further undergo RI for 6 months each. All the appellants have jointly filed the present appeal.

3. As per the prosecution case, all the appellants were living jointly at H.No.104/6, Defence Enclave, Mangal Bazar, Uttam Nagar, New Delhi. The deceased, Anju was also living with her family comprising of her father, mother and brother in Delhi. As per the wish of both the families, Anju was married to Rakesh on 27.12.1999 at Shanti Kunj Ashram, Haridwar and after the Gona Ceremony was performed on 24.01.2000, she went to her above matrimonial home. It is the stand of the prosecution that Anju had expired on 19.08.2002 at her matrimonial home due to consumption of Aluminum Phosphide.

4. The investigation started with the information recorded in DD14 (Ex. PW-7/A) on 19.08.2002, at 6.45 pm in P.S. Uttam Nagar. The contents of DD14 are as follows:-

"6:45 PM it was reported by one Ram Lakhan s/o Dwarika Parsad that H. No.10 Part II, Defence Enclave, Mohan Garden, Mangal Bazar Vijay Diary ke samne Balaji Chowk ke aage ek aurat hamen pareshan kar rahe hai. When the PCR reached the spot, they found a lady in an unconscious state. On enquiry, they came to know that name of the lady was Anju. HC Bodhraj from the PCR got Anju admitted in the DDU hospital.

5. On 19.08.2002, when Bhure Ram, father of the deceased, returned home at about 9:25 PM, he was told by his son that he had received a telephonic call that Anju was admitted in DDU Hospital in a serious Crl.A.298/2004 Page 2 of 20

condition. Within 5 minutes, another call was received by Bhure Ram and he was told by some police official that Anju had expired and was asked to reach P.S. Uttam Nagar. The MLC (Ex.PW1/A) records that Anju was brought and admitted in DDU Hospital by HC Bodh Raj and she was declared brought dead. Dr Manoj Nagpal (PW-17) conducted the Post Mortem examination on 19.08.2002, at 9 pm and the cause of death was kept pending for the viscera report. Later, he gave an opinion that Anjus death was caused due to consumption of Aluminium Phosphide.

6. On 20.08.2002, inquest proceedings were conducted by the SDM Sh.Vijay Khanna (PW-10), who recorded the statements of Bhure Ram, father of the deceased (Ex. PW-10/D) as well as of Malti Devi, mother of the deceased (Ex. PW-10/C). In their statements, the parents levelled allegations of dowry demand and ill-treatment of the deceased at the hands of the appellants. Since the death had occurred within 7 years of the marriage, FIR No.604/2002 was registered under Sections 498A/304B IPC at PS Uttam Nagar and investigations proceeded. The CFSL report (Ex PW15A) dated 07.01.2003 pertaining to viscera examination showed presence of Aluminum Phosphide.

7. After completion of the investigation, the chargesheet was filed on 18.11.2002 and charges were framed by the learned ASJ, Delhi against the appellants No.1 and 2, Rakesh and Ram Lakhan under Sections 304B and 498A IPC on 18.02.2003. On 14.05.2003, after the arrest of appellants No.3, 4 and 5, Raj Kumar, Somwati (sister in law) and Somwati (mother- in-law), a supplementary challan was filed and similar charges were framed by the learned ASJ, Delhi against the said appellants. All the appellants had pleaded not guilty. Crl.A.298/2004 Page 3 of 20 8. During the trial, a total of 19 witnesses were examined, including the material witnesses, namely, Sh. Bhure Ram, father of the deceased (PW-13); Malti Devi, mother of the deceased (PW-16) and Shailesh, brother of the deceased (PW-14). The Post Mortem Report (Ex. PW-17/A) was proved by Dr. Manoj Nagpal (PW-17). The CFSL report (Ex. PW- 15/A) was proved by Dr. Ravinder K Jain (PW-15); MLC report (Ex. PW- 1/A) was proved by Dr. Vineet K Soni (PW-1). Sh. Vijay Khanna, SDM Punjabi Bagh who appeared as PW-10, proved the inquest proceedings (Ex. PW-10/B) and the statements of

Bhure Ram and Malti Devi recorded by him as Ex. PW-10/D and Ex. PW10/C, respectively. HC Bodh Raj, who had brought and got Anju admitted in DDU Hospital, was examined as PW-6. The Investigating Officer, Deepak Malik was examined as PW-19. The deceased had filed a complaint on 21.06.2002 before the CAW Cell, Pitam Pura, Delhi, the same was proved by PW-12 Ct. Parveen and is exhibited as Ex. PW-12/A. The other witnesses were essentially witnesses relating to the arrest, seizure and other investigations.

9. The appellants were examined under Section 313 Cr.P.C. and chose not to lead any evidence in their defence. Material Witnesses:

10. PW-13, Bhure Ram has deposed that Anju was married to Rakesh on 27.12.1999 at Shanti Kunj, Haridwar. At the time of marriage, he had given dowry articles as per his financial and social status. Anjus Gona Ceremony was performed on 24.01.2000. He further stated that after about 15 days of marriage, when the deceased came to her paternal home, she told him that she was being harassed by Rakesh, Raj Kumar, Ram Lakhan, Somwati (mother-in-law) and Somwati (Sister-in-law); that the CrI.A.298/2004 Page 4 of 20 appellants were demanding dowry from her and that a sum of Rs.20,000/- was specifically demanded by all of the appellants. He stated that after about 3 months, his daughter had gone back to her matrimonial home and at that time, Rs. 16,000/- was arranged by him and given to her. He further stated that after about 3 to 4 days, Anju again came back to her parental home and told him that she had paid the said amount of Rs.16,000/- to her brother-in-law Raj Kumar; that she was sent back with a direction that she should bring more money, since her father was a wealthy person in the estimation of the appellants. Thereafter, he along with 2-4 persons, went to meet the in-laws of his daughter to express his inability to pay any more money. However, the appellants insulted and humiliated him and asked him to leave the house. The deceased continued to stay at her parental home. On 21.6.2002, she filed a complaint (Ex. PW-12/A) before the CAW Cell, Delhi. The appellants moved bail applications which came up for hearing on 06.08.2002. The said hearing was attended by the deceased, her parents and brother. In the said bail proceedings, the deceased showed her apprehension in going back to her matrimonial home on account of threats extended to her life. After the assurance

of the Court, she went to her matrimonial home on 06.08.2002. PW-13 also stated that her daughter had remained at her parental home for about two years, till 06.08.2002 and during that time, the appellants had never enquired about her.

11. PW-16 Malti Devi, mother of the deceased deposed on similar lines as Bhure Ram. She deposed that after about two months of the marriage, Anju came to her parental home and told her that Rakesh had demanded money from her since he had to start some business. Anju informed them that a sum of Rs.20,000/- was demanded from her. They arranged a sum of Rs.16,000/- from someone and gave that money to Anju and after about Crl.A.298/2004 Page 5 of 20 2-3 days, she went to her matrimonial home on her own, since her husband did not have the time to come to their house. That after about ten days, Anju again came to her parental home and told her that the sum of Rs.16,000/- was paid to Raj Kumar, (brother-in-law) and that she was beaten by all the appellants and was turned out of her matrimonial home. Anju told her that Raj Kumar uttered that since her father was a wealthy person who could pay Rs.16,000/-, then she should bring more money for him. Anju stayed with her for a period of two years after this. She deposed on similar lines as PW-13 with regard to the period after Anju came back to her parental home.

12. Shailesh, brother of the deceased appeared as PW-14 and also deposed on similar lines as PW-13 and PW-16.

13. Arguments have been heard from both sides. Learned defence counsel has urged that all the ingredients of Section 304B IPC are not proved; that Section 113B of the Indian Evidence Act is not applicable; that from a reading of the testimonies of PW-13, PW-14 and PW-16, who are the family members of the deceased, no specifics have been given as to when and by whom the alleged dowry demand of Rs.20,000/- was made and also as to when and to whom the amount of Rs.16,000/- was allegedly paid; that though the deceased had died in less than three years of her marriage, she had spent almost 2 years and 4 months at her parental home; that the complaint made by the deceased before the CAW Cell, while she was at her parental home, is also silent about any threats to her life. Learned counsel also contended that the allegations with respect to the

statement made by the deceased before the learned ASJ in the bail proceedings of the appellants, are not supported by what was actually Crl.A.298/2004 Page 6 of 20 recorded in the order sheet of 06.08.2002; that there are material improvements and contradictions in the statements of the witnesses. The findings of the trial court where Section 32 of the Indian Evidence Act has been invoked for treating the complaint filed by the deceased before the CAW Cell, as well as her statement seeking guarantee of the Court as a dying declaration, have also been assailed. Ld. defence counsel has placed reliance on Kans Raj v. State of Punjab & Ors., (2000) 5 SCC207 and Sham Lal Etc. v. State of Haryana Etc. (1997) 9 SCC759 in support of the pleas taken above.

14. On the other hand, learned APP has supported the judgment of the trial court and has relied on the definition of Cruelty under Section 498A IPC and of Dowry Death in Section 304B IPC. It has been argued that all the witnesses were consistent about the dowry demand raised by the appellants. She has also placed reliance on Kans Raj (supra) to urge that mere lapse of time by itself would not provide a defence to an accused, if the course of conduct relating to cruelty or harassment is shown to have existed earlier in time. Analysis: Whether charge under Section 304B IPC is made out:

15. The essential ingredients for prosecution under Section 304B are: (i) the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances; (ii) such death must have occurred within seven years of her marriage. (iii) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or any relatives of her husband; Crl.A.298/2004 Page 7 of 20 (iv) such cruelty or harassment must be for, or in connection with, demand for dowry.

16. In the instance case, it is an admitted fact that both the parties were residents of Delhi and the marriage of deceased with the appellant No.1, Rakesh was solemnized on 27.12.1999. The prosecution has proved that Anju had died on 19.08.2002 which was within 7 years of her marriage. She had died at her matrimonial home because of consumption of aluminum phosphide. As such, ingredients No.(i) and (ii) are satisfied.

17. To examine if ingredients (iii) and (iv) are satisfied in the facts of the present case, it would be appropriate to appreciate the evidence of the material witnesses i.e., PW-13, PW-14 and PW-16, adduced before the trial court as well as the complaint dated 21.06.2002 filed by Anju before the CAW Cell, under the following three categories: - a. Whether any dowry was demanded at the time of marriage; b. Whether any dowry was demanded after the marriage till 06.08.2002; & c. Whether any dowry was demanded after 06.08.2002.

a. Demand of Dowry at the time of marriage 18. On a conjoint reading of the testimonies of PW-13 (Bhure Ram), PW-16 (Malti Devi) and PW-14 (Shailesh), it stands proved that the deceased was married to Rakesh on 27.12.1999 and at that time, articles were given according to their financial and social status, on various dates which is evident from the list of articles. The list was annexed with the complaint (Ex. PW-12/A) filed by Anju on 21.06.2002, before the CAW Cell. A careful scrutiny of the records show that no witness has stated that CrI.A.298/2004 Page 8 of 20 there was any demand of dowry at the time of the marriage. There is no evidence that articles as specified in the above list were given pursuant to any demand raised by the appellants. A perusal of the complaint dated 21.06.2002 filed by the deceased before the CAW Cell also shows that there is no allegation made therein about any dowry demand made by the appellants at the time of the marriage.

b. Demand of Dowry after the marriage till 06.08.2002 19. According to the testimonies of PW13, PW14 & PW16 as well as the complaint dated 21.06.2002 made by the deceased, it has come on record that within about 15 days of her marriage, Anju had come back to her parental home and informed about the demand of dowry made by all the appellants. She also mentioned about the specific demand of Rs.20,000/-. The witnesses have consistently stated that dowry demand of Rs 20,000/- was partially met on payment of Rs 16,000/- and all this had happened within 3-6 months reckoned from 27.12.1999 i.e., date of marriage.

20. Mr H.P. Aditya, learned defence counsel has vehemently argued that the purpose of demand has either not been stated, or has been improved upon by the witnesses. He has pointed out that whereas PW-13 is silent about the purpose of the demand, PW-14 has stated that the said amount was demanded by Rakesh to run a shop of fridge & A/C repair and as per PW-16, all the appellants had demanded the said amount to start a business. He has also pointed out the

contradictions on this aspect. To support his argument, he has relied upon Appasaheb Vs. State of Maharashtra (2007) 9 SCC721 CrI.A.298/2004 Page 9 of 20 21. We do not need to dwell upon the import of the said decisions as the Supreme Court has overruled Appasaheb (supra) in Rajinder Singh Vs State of Punjab (2015) 6 SCC477 on the aspect of purpose of demand and observed as follows:-

"20. Given that the statute with which we are dealing must be given a fair, pragmatic, and common sense interpretation so as to fulfil the object sought to be achieved by Parliament, we feel that the judgment in the Appasaheb case followed by the judgment of Vipin Jaiswal do not state the law correctly. We, therefore, declare that any money or property or valuable security demanded by any of the persons mentioned in Section 2 of the Dowry Prohibition Act, at or before or at any time after the marriage which is reasonably connected to the death of a married woman, would necessarily be in connection with or in relation to the marriage unless, the facts of a given case clearly and unequivocally point otherwise. (emphasis added) c. Demand of Dowry after 06.08.2002 22. We propose to treat 06.08.2002 as a watershed since the testimonies of the witnesses reveal that it was on the said date that the deceased had gone to her matrimonial home from the Court premises itself. A perusal of case record shows that after Anju had gone to her matrimonial home on 6.8.2002, there is no evidence of any contact made by her with her parents. None of the witnesses have stated anything about any demand, cruelty or harassment on the part of any of the appellants during this period. As per the prosecution case, the deceased had consumed poison on 19.8.2002. There is no evidence of any demand of dowry having been made by any of the appellants from 6.8.2002 to 19.8.2002.

23. Before we arrive at a conclusion as to whether ingredients No.(iii) and (iv) of Section 304B IPC are satisfied and whether the presumption CrI.A.298/2004 Page 10 of 20 under Section 113B of Indian Evidence Act is attracted in the facts of the present case, it would be profitable to refer to some decisions of the Supreme Court on this aspect.

24. In *Kans Raj* (supra), the Supreme Court considered the term soon before and expressed the following view:-

"15. Soon before is a relative term which is required to be considered under specific circumstances of each case and no strait-jacket formula can be laid down by fixing any time-limit. This expression is pregnant with the idea of a 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 between 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 showing 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 of such treatment is not brought on record, before such alleged 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. (emphasis added). Crl.A.298/2004 Page 11 of 20 25. In *Sham Lal* (supra) it was observed by the Supreme Court that: 11. It is imperative, for invoking the aforesaid legal presumption, to prove that soon before her death she was subjected to such cruelty or harassment. Here, what the prosecution achieved in proving the most was that there was persisting dispute between the two sides regarding the dowry paid or to be paid, both in kind and in cash, and on account of the failure to meet the demand for dowry, Neelam Rani was taken by her parents to their house about one and a half years before her death. Further evidence is that an attempt was made to patch up between the two sides for which a panchayat was held in which it was resolved that she would go back to the nuptial home pursuant to which she

was taken by the husband to his house. This happened about ten to fifteen days prior to the occurrence in this case. There is nothing on record to show that she was either treated with cruelty or harassed with the demand for dowry during the period between her having been taken to the parental home and her tragic end.

12. In the absence of any such evidence it is not permissible to take recourse to the legal presumption envisaged in Section 113-B of the Evidence Act. That rule of evidence is prescribed in law to obviate the prosecution of the difficulty to further prove that the offence was perpetrated by the husband, as then it would (emphasis added) (emphasis added) In *Sher Singh v State of Haryana* (2015) 3 SCC 724 the Supreme Court has stated as below:-

"16..We are aware that the word soon finds place in Section 304-B; but we would prefer to interpret its use not in terms of days or months or years, but as necessarily indicating that the demand for dowry should not be stale or an aberration of the past, but should be the continuing cause for the death under Section 304-B or the suicide under 306 IPC. Once the presence of these concomitants is established CrI.A.298/2004 Page 12 of 20 or shown or proved by the prosecution, even by preponderance of possibility, the initial presumption of innocence is replaced by an assumption of guilt of the accused, thereupon transferring the heavy burden of proof upon him and requiring him to produce evidence dislodging his guilt, beyond reasonable doubt."

(emphasis added) 27. In *Pyare Lal v State of Haryana* (1997) 11 SCC 552 the facts of the case were that the deceased had married the appellant therein on 27.04.1983 and thereafter, certain demands were raised including transfer of house and shop. Subsequently, a demand of Rs.10,000/- was made which was partially fulfilled. In spite of this, the deceased was not kept in her matrimonial home. She stayed at her father's house for two years after which a compromise was reached on 1.12.1987 and the deceased went back to her matrimonial home. Her attempt to come back on account of harassment, was scuttled by her father. On 19.12.1987, while at her matrimonial home, the deceased had committed suicide by consuming insecticide. In this factual background, it was held by the Supreme Court that:-

"4Whatever demands of dowry arose after the marriage, over which there were differences between the parties were settled or got receded when the deceased resumed co-habitation with her husband on 2- 2-1987 the day following when Ex.PG was written. There is no whisper thereafter of any demand of dowry.

28. To a similar effect, are the decisions of the Supreme Court in *Satpal v State of Haryana* in (1998) 5 SCC687 and *Surinder Singh v State of Haryana* (2014) 4 SCC129 In *Rajinder Singh* (supra), it was held that: Crl.A.298/2004 Page 13 of 20 24. Days or months are not what is to be seen. What must be borne in mind is that the word "soon" does not mean "immediate". A fair and pragmatic construction keeping in mind the great social evil that has led to the enactment of Section 304-B would make it clear that the expression is a relative expression. Time-lags may differ from case to case. All that is necessary is that the demand for dowry should not be stale but should be the continuing cause for the death of the married woman under Section 304-B. (emphasis added) 29. In *Baljinder Kaur vs. State of Punjab* (2015) 2 SCC629 the Supreme Court was dealing with a case where the deceased therein (*Sharanjit Kaur*) had married the appellant (*Pritam Singh*) in January 1997 and after two months of the marriage, there was a dowry demand including that of a Gold karra by her in-laws. The deceased had come to her parental house and after one month of the demand, she had gone back to her matrimonial home. Again, after about one month she came back to her maternal house narrating the same demand of Karra. Two days prior to her death, the accused had taken her back to her matrimonial home where on 25.8.1997, she had died of poisoning. It has been held by the Supreme Court that : 23. In our considered view, the alleged demand of Gold Karra about two months after the marriage cannot be said to constitute a proximate live link with the death of deceased *Sharanjit Kaur* and the conviction of the appellant under Section 304-B cannot be sustained..

30. In *State of Karnataka v Dattaraj & Ors.* (2016) 12 SCC331 the Supreme Court observed that:-

"19. Insofar as the demand of Rs.20,000/- for the purchase of agricultural land is concerned, it is apparent that the same was allegedly made when Crl.A.298/2004

Page 14 of 20 Dattaraj was in Dubai. The said demand was allegedly made by Ningesh (respondent - accused no.2), the father of Dattaraj, when he had gone to leave Savita at her maternal home. Dattaraj is stated to have returned to India from Dubai eight to ten months, after the above demand. A female child was born to Savita about a year after the return of Dattaraj to India. After the birth of the female child, Savita had remained in her maternal house, for about four to five months. Therefore, even if the above oral allegation is accepted as correct, it was a demand made about two years before the occurrence. The same was too remote to the occurrence, and therefore, would not satisfy the requirement of soon before her death contemplated under Section 304-B(1) IPC of the Indian Penal Code. (emphasis added) 31. We have carefully analysed the evidence on record and note that the only demand of dowry that has surfaced is of Rs. 20000/-. The said demand was made in the first 3-6 months of the marriage. After the said demand was partially met, although the deceased was asked to bring more money, yet no specific subsequent demand has come on record. The deceased continued to stay at her parental home for more than 2 years even though some efforts were made by her family members to work out a reconciliation with her in-laws. The deceased was at her parental home when she had filed the complaint (Ex PW12/A) on 21.6.2002, before the CAW Cell. In this complaint also, the deceased had stated that she had not heard from her in-laws for the last 2 years. We find that there was a complete hiatus in the relations between the deceased and the appellants for more than 2 years, till about 6.8.2002. Even after 6.8.2002, when the deceased had joined back at her matrimonial home, there is no evidence on record that any demand of dowry was made. The trial court has relied on Section 32 Indian Evidence Act to treat the complaint dated 21.06.2002 filed by the deceased before the CAW Cell and the statement made by her CrI.A.298/2004 Page 15 of 20 before the court on 6.8.2002, as deposed by witnesses (PW-13, PW-14 and PW-16), as her dying declarations. However, the complaint filed by the deceased is silent about any threats to her life at the hands of the appellants. Even if the statement of the witnesses as to what had transpired in the court during the bail proceedings on 6.8.2002 are accepted, the apprehension expressed by the deceased related to the time period when she was thrown out of her matrimonial home in the first few months of the marriage i.e., within 3-6 months reckoned from

27.12.1999. The said apprehension cannot be held to be a cause of her death or a circumstance of the transaction which had resulted in her death.

32. In these facts and circumstances, we find that the ingredients of soon before are absent in the present case. The demand of Rs. 20,000/- made in first 3-6 months of the marriage, cannot be said to constitute a proximate and live link with the death of Anju on 19.8.2002 which was after 2 years. Apart from above, there are also inconsistencies found in deposition of the witnesses as to who had demanded the sum of Rs.20,000/-. Whereas PW-13 has attributed the said demand to all the appellants, PW-14 has attributed the same to the appellant No.1, Rakesh only. PW-14 was confronted with his earlier statement made during the investigation where he had not specifically named Rakesh. Similarly, in her deposition PW-16 had attributed the demand of Rs. 20,000/- to the appellant No.1, Rakesh alone while in her earlier statement made to the SDM and the Police, the name of the appellant No.3, Raj Kumar was found mentioned. The presumption under Section 113B Indian Evidence Act can come into play once the prosecution proves all the ingredients of Section 304B IPC, which as noted above, are woefully lacking in the present case. As a result, the conviction of the appellants under Section 304B IPC CrI.A.298/2004 Page 16 of 20 cannot be sustained and the impugned judgment is set aside to the said extent.

33. Though the ingredients of the offence under Section 304B IPC are found to be lacking against all the appellants, it is to be seen from the evidence on record as to whether they are guilty for the offence of cruelty. The Trial Court has convicted the appellants for the offence under Section 498A IPC. The word Cruelty is defined in Section 498A IPC as follows: 498A. Husband or relative of husband of a woman subjecting her to cruelty- whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.- for the purposes of this Section, cruelty means- (a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or harassment of the woman where such harassment (b) is with a view to coercing her or any person related to her to meet any unlawful

demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. 34. The testimony of the witnesses and the complaint dated 21.06.2002 filed by Anju before the CAW Cell narrates the treatment meted out to her while she was at her matrimonial home. The said complaint was proved by PW-12, Ct Praveen. Even, the appellants did not deny filing of the above complaint, though they had disputed its contents. As per the CrI.A.298/2004 Page 17 of 20 deposition of PW-13, PW-14 and PW-16, the deceased had come back within 15 days of her going to the matrimonial home when she complained about the demand of dowry raised by all the appellants. PW-16 has stated that despite the fact that the deceased had paid Rs. 16,000/- to the appellant No.3, Raj Kumar, all the appellants had taunted her to bring more dowry and she was again sent back to her parental home. PW-16 has stated about the beatings given to the deceased by the appellants. Efforts were made by the family of the deceased to patch up but they were humiliated at the hands of the appellants. Even when a girl child was born 1 years before Anjus death, no efforts were made by the appellants to take her back to the matrimonial home. Both, PW-13 & PW-14 have supported the testimony of PW-16 on these material aspects.

35. In her complaint dated 21.06.2002 (Ex PW-12/A), Anju had stated in detail about the acts of cruelty, taunts, harassment and beatings given to her by all the appellants. She specifically named all the appellants therein. She had stated that in spite of giving Rs.16000/- to the appellant No.3, Raj Kumar, he had spent the same instead of using it. When she had objected, Rajkumar made false accusations at her. All the appellants asked her to bring more money as they felt her father was a wealthy person. She was taunted and also beaten by all the appellants. Anju had stated that, while she was at her matrimonial home, she was not provided with any food and was kept hungry for 2-3 days, for not bringing dowry. She had also stated that all her dowry articles were lying with the appellants and had prayed for return of same. It is noteworthy that the said complaint was filed by the deceased only two months before her death. CrI.A.298/2004 Page 18 of 20 36. The appellants did not even bother to inform Anjus family about her serious condition on 19.08.2002. HC Bodhraj who was examined as PW-6 stated that he was on PCR duty on the said date and on reaching the spot, he had found Anju lying in an unconscious state. It was he who

had admitted her in an injured condition in DDU Hospital. As per the MLC, Anju was brought dead. ASI Satbir Singh who appeared as PW-7, was the one who had informed the parents of Anju about her being admitted in the hospital.

37. All the above facts when examined collectively, clearly go to prove that all the appellants had treated the deceased with cruelty. Therefore, their conviction under Sections 498A IPC is maintained. Conclusion:

38. The appeal is partly allowed. The appellants conviction under Section 304B IPC is quashed and set aside. The appellants conviction under Sections 498A IPC and the order of sentence are, however, upheld. For the offence under Sections 498A IPC, each of the appellants have been sentenced to undergo RI for 2 years and to pay a fine of Rs.1,000/-, and in default, they have been directed to further undergo RI for 6 months each. From a perusal of the Nominal Rolls available on record, it appears that the appellant No.1, Rakesh has already undergone sentence of almost 6 years; the appellant No.2, Ram Lakhan has undergone sentence of almost 3 years; the appellant No.3, Raj Kumar has undergone sentence of almost 4 years; and both the appellant Nos.4 & 5 i.e. Somwati w/o Raj Kumar & Somwati w/o Ram Lakhan have undergone sentence of 1 year and 7 months each. CrI.A.298/2004 Page 19 of 20 39. The offence had taken place nearly 16 years ago. The appellants No.1, 2 and 3, Rakesh, Ram Lakhan and Raj Kumar have already undergone the sentence which is beyond the awarded sentence of 2 years under Section 498A IPC. Their fine and default sentences are set aside. As far as the appellants No.4 and 5, namely Somwati w/o Raj Kumar and Somwati w/o Ram Lakhan are concerned, keeping in mind their roles and taking into account their nominal rolls, their sentence is modified to the period already undergone. This is, however, subject to deposit of fine of Rs 1000/- by each of them, if not already paid, within 1 month from the date of the judgment. In the event, the fine is not deposited, both the appellants No.4&5 shall surrender and will undergo the default sentence of RI for 6 months. Subject to deposit of fine, their personal bonds and surety bonds are discharged. All the appellants will fulfill the requirement of Section 437-A Cr.P.C. to the satisfaction of the Trial Court, at the earliest.

40. The trial court record be sent back together with a certified copy of this judgment. JANUARY15h, 2019/sm (MANOJ KUMAR OHRI) JUDGE (HIMA KOHLI) JUDGE CrI.A.298/2004 Page 20 of 20

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com