

**Naraini Devi Vs. State**

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**Court :** Delhi

**Decided On :** Feb-24-1992

**Reported in :** 46(1992)DLT506; I(1992)DMC413; 1992(22)DRJ372

**Judge :** Dalveer Bhandari, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 304-B, 306 and 498-A

**Appeal No. :** Criminal Appeal Nos. 102 and 120 of 1991

**Appellant :** Naraini Devi

**Respondent :** State

**Advocate for Pet/Ap. :** K.B. Andley,; Sunil Sethi,; S.C. Jain and;

**Judgement :**

**Dalveer Bhandari, J.**

(1) Two separate appeals have been filed by Naraini Devi and Satish Kumar against a common Judgment of Shri S.L. Bhayana, learned Additional Sessions Judge, Delhi, dated 27th July, 1991. The learned Additional Sessions Judge has convicted both the accused under Section 304 of the Indian Penal Code and also under Section 498-A, Indian Penal Code. Under Sec.304-B, the appellants were convicted and sentenced to undergo rigorous imprisonment for 7 years and under Section 498-A, Indian Penal Code, the appellants were convicted and sentenced

to one year's rigorous imprisonment and both the petitioners were further sentenced to pay a fine of Rs.200.00 each and in default of payment of fine, to further undergo rigorous imprisonment of one month each. Both the sentences were however ordered to run concurrently.

(2) Aggrieved by the said judgment, the appellants have preferred these two appeals before this court. Brief facts which are necessary to dispose of these appeals are set out as under:-

SMT.RAJESH was married to accused Satish Kumar on 28th April, 1988. On 10th October, 1989, in an unfortunate incident Smt.Rajesh committed suicide. The story of the prosecution is that, Smt.Rajesh was given adequate dowry, according to the status of her father in the marriage, though there was no demand of dowry at the time of the marriage but soon after, the accused Satish and his mother Narain Devi started demanding money and dowry from the deceased and her parents. It is alleged that initially, they demanded Rs.200.00 , then Rs.500.00 and then RS.1000.00 These amounts were paid by the in-laws of the accused Satish Kumar. It is further alleged by the prosecution, that when the accused Satish Kumar demanded a scooter from his inlaws, they declined to give it, to him on the ground that they were not in a position to give scooter. The accused persons started harassing, beating and torturing Smt.Rajesh and as a result of which Smt.Rajesh ultimately committed suicide by hanging on 10th October, 1989.

(3) Charges under Section 498-A/34 Indian Penal Code were framed against both the accused of which they pleaded not guilty and claimed trial.

(4) The prosecution in support of its version has examined as many as 11 witnesses. P.W.1 is Suresh Kumar. He had deposed that Smt.Rajesh was his sister and she was married to accused Satish Kumar on 28th April, 1988. His father had performed the marriage of Smt.Rajesh according to his status. On 10th October, 1989 around 7 P.M., someone had informed Public Witness .I Suresh Kumar that his sister Smt.Rajesh had died. Immediately thereafter, Public Witness .I Suresh Kumar Along with his two brothers Sant Ram and Anant Ram and mother had gone to the house of the accused persons in Rohini, Delhi. On reaching there, they found that Smt.Rajesh was lying on the floor of the room and

she was dead. A piece of cloth was tied around her neck which had been cut. Another piece of same cloth was tied on the ceiling fan installed in the same room. The accused Satish and his mother Naraini were present outside the house at that time. Police was also present. Police completed all the formalities and after the post-mortem, the body of Smt.Rajesh was handed over to Shri Suresh Kumar for performing last rites.

(5) Sant Ram is the Public Witness .2. He has deposed that his sister Smt.Rajesh was married to the accused Satish about one and a half year before the aforesaid incident. The marriage was solemnised by her three brothers. There was no demand at the time of marriage from the side of the accused persons. He has mentioned about the demand of money from the deceased's parents and according to him, a total of Rs.5000.00 , Rs.3000.00 and RS.1000.00 each on two occasions was paid to the accused persons. It has been further stated by learned counsel for the State that the deceased was harassed. -He has mentioned in his statement that sometimes his sister used to take money and sometimes his younger brother used to take money to give them. He mentioned that his sister used to complain of harassment by her mother-in-law who used to compel her to bring more money from her parents. When the accused demanded the scooter, at that time, they were not in a position and could not arrange for the scooter. According to the prosecution, this was the real cause which led to this unfortunate incident. On that day, he was informed around 4 P.M. at his house about the death of his sister Smt.Rajesh at the house of her in-laws and he Along with his brother and other family members went to the house of the accused persons. It is clear that Smt.Rajesh died on 10th October, 1989 in the afternoon. There is no dispute on this point. Body of the deceased was identified by Shri Sant Ram, brother of the deceased.

(6) Since the death had taken place in suspicious circumstances, therefore, post mortem was conducted. The learned Additional Sessions Judge apart from the testimony of the two brothers has placed reliance on the statement of Public Witness .4 Raj Singh. The accused were convicted in this case on the testimony of Public Witness .1 and Public Witness .2, brothers, Public Witness .3 Dr.L.K. Baruah, who had given the cause of death due to hanging. It would be appropriate

to scrutinise the evidence of these witnesses because conviction is primarily based on the testimony of these witnesses.

(7) It is the most significant aspect of the matter that admittedly on 10th October, 1989 in the evening about 6/7 O'Clock, Public Witness .I got the information about the death of his sister. Immediately on getting this information he Along with his mother and two brothers Sant Ram and Anant Ram went to the house of the accused persons in Rohini. On reaching there, they saw Smt.Rajesh lying on the floor of the room. He also noticed a piece of cloth was tied around her neck which had been cut and another piece of same cloth tied to the ceiling fan installed in the same room. Both the accused were also present. Police was also present. The police removed the dead body after completing the formalities at the spot. The post-mortem was conducted on the next day and the body of Smt.Rajesh was handed over to the family for performing the last rites.

(8) P.W.1 Suresh Kumar did not mention a word that his sister has died because of continuous torture, harassment and ill treatment of the accused. He did not file the First Information Report on 10th, 11th or 12th. The First Information Report is lodged on 13th October, 1989 at 10.05 P.M.

(9) There is no convincing Explanation whatsoever for such long delay in lodging the FIR. The police officials who were available in the same evening on the 10th October, 1989 were also not told about this incident. This is also not in consonance with normal human conduct. This unduly long delay seriously cast doubt on the truthfulness and credibility of the entire prosecution version. This witness mentions in his statement that he had paid Rs.500.00 and his mother had paid RS.1000.00 and on two occasions, he paid also Rs.500.00 and Rs.200.00 . This fact comes to light for the First time much after the death of Smt. Rajesh, his sister. Never before any complaint or protest was made in any quarter. No report or complaint was ever Filed. This also throws doubt on the credibility of the prosecution version. It gives the impression that the entire theory of demand of cash/dowry was an afterthought.

(10) The statement of Sant Ram, Public Witness .2 also suffers from similar lacuna because it is almost an identical statement with that of Public Witness .I Suresh

Kumar. He also did not bother to lodge the First Information Report for all these days. According to the statement of both these witnesses, they Along with their mother had gone to the house of the deceased. She was the most natural witness and prosecution has not provided any Explanation for not examining her. Non-examination of the mother of the deceased also casts doubt on the credibility of the prosecution version.

(11) The statement of Dr. L.K. Baruah is also significant. He did not find any external injury or any mark of violence on the body of the deceased Smt.Rajesh. This rules out any possibility of torture or homicide. Otherwise some resistance by an able-bodied person of 22 years is quite natural.

(12) The prosecution cited Krishan Gopal, D.W.I and J.P. Malik, two immediate neighbours of the deceased and the appellant but did not produce any one of them. Both these witnesses were natural witnesses and they could have thrown some light between the relationship of the deceased and the accused persons. There is no Explanation for not producing these two witnesses. Krishan Gopal was examined on behalf of the accused as a defense witness and he has categorically stated in his statement that the relationship between the deceased and the accused was cordial and he never saw any quarrel, dispute or altercation of any kind between them. There was no demand of dowry at any point of time. The deceased had very cordial relations with her mother-in-law also. They had never seen any dispute or quarrel between them.

DINESH Kumar Public Witness .I I has categorically mentioned in his cross-examination, 'I started investigation in this case on 13.10.89. Prior to this day, the brother of the deceased never made any statement before me. I made enquiries from the neighbours. It is correct that the neighbours namely J.P. Malik and Krishan Gopal had told me that they never saw accused persons quarrelling or harassing Smt.Rajesh Kumar at any time.'

(13) On careful scrutiny of the entire evidence, the following conclusions are irresistible. 1. Immediately after the death of Smt.Rajesh, brothers of the deceased and her mother reached the spot. The accused were also there. When they reached there, Police officials were already present. None of them made any

complaint or report to the Police officer about the harassment by the accused or their persistent demand of dowry which led to this incident. Another significant factor is that even after getting information about the death of Smt. Rajesh Kumari, none of them filed First Information Report until 10.05 P.M. on 13th October, 1989. The First Information Report in this case is filed on 13th October, 1989 at 1005 P.M. This long and unexplained delay casts grave doubt on the credibility and truthfulness of the prosecution version. The trial court's Finding that the delay is because the concerned officer was busy for all these days does not inspire any confidence.

(14) Two immediate neighbours Krishan Gopal and J.P. Malik, were cited as prosecution witnesses but the prosecution failed to produce both of them. Out of them, Krishan Gopal was examined on behalf of the appellant as defense witness and he has categorically discarded the entire prosecution version. The Investigating Officer. Public Witness .I I has also mentioned in his cross-examination that before 13.10.89, none of the brothers of the deceased made any complaint before him.

(15) Immediately after the death of Smt. Rajesh when the mother and brothers of the deceased reached her house, where the accused were also present around 6 P.M. on 10.10.89, none of them bothered to file Fir until 10.05 P.M. on 13.10.89. This is totally an unnatural conduct. The other significant factor is that no complaint or report was ever lodged regarding harassment and torture of the deceased. Admittedly, there was no demand of dowry at the time of the marriage. Both immediate neighbours Krishan Gopal and J.P. Malik who were cited as witnesses were not examined by the prosecution and in fact Krishan Gopal was examined as defense witness. All these factors cumulatively cast serious doubt on the truthfulness and credibility of the prosecution version.

(16) Shri K.B. Andley, who argued the case on behalf of the appellants has laid emphasis that unexplained and undue long delay in the instant case has led to a miscarriage of justice. He has relied on a Supreme Court Judgment Thalia Kali v. The State of Tamil Nadu 1972 Car 280 where the Supreme Court has observed that in a criminal case, F.I.R. is a very vital document .and very often delay in

lodging the F.I.R. results in embellishment which is a creature of afterthought. The relevant headnote is set out as under:-

'FIRST information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eyewitnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets benefit of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or connected story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained.

(17) Counsel for the appellants also relied on the Judgment in Chanchal Kumari & Ors. v. Union Territory, Chandigarh 1985 2 CLR.361. This Judgment was cited for the proposition that suspicion may be strong to any extent but that can never take the place of truth. This case also pertains to suicide committed by a bride. The allegations were that the husband and in-laws were alleged to have instigated and abetted her to commit suicide. In this case, the prosecution evidence consisted of brothers of the deceased and that of the persons of the neighborhood that husband used to demand money from the deceased to build a house. The neighbours of the deceased who claimed to have seen her in laws beating her and also to have heard her cries at night time, however, did not give this information immediately to Police or anybody else. The court came to the conclusion that there being no legal evidence to establish that any of the accused abetted the deceased to commit suicide and suspicion, however, strong, cannot take place of the truth. The Judgment of the High Court was set aside and accused were acquitted of the charge u/s 306 Indian Penal Code .

(18) The petitioner also placed reliance on a Division Bench Judgment reported as State of Punjab vs. Anant Ram, 1991 (2) RCR 380. This was also a case under Section 306 and 304-B of the Indian Penal Code. Father of the deceased who happened to be present at the time of post-mortem and cremation, but no F.I.R. was lodged. Subsequently, father sent a complaint to the Prime Minister that it was a case of dowry death. The story of maltreatment was introduced at a belated stage and the accused were acquitted of these charges.

(19) In the instant case also, there is unexplained delay of lodging the report particularly when brothers and mother were present immediately after the death of the deceased on 10th October, 89 itself, and First Information Report was not lodged till 10.05 P.M. on 13th October, 1989.

(20) On the facts and circumstances and documents on record, the conclusions arrived at by the learned Additional Sessions Judge are erroneous and consequently set aside. It would be totally unsafe to record conviction on such quality of the evidence.

(21) Both the appeals filed by the appellants are allowed and the appellants are acquitted of the charges under Section 498-A/304B/34, Indian Penal Code . The appellants shall be released, if not required to be detained, in any other case.