

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

+ **CRL.A. 245/2001**

% Reserved on: 2nd November, 2010

Decided on: 30th November, 2010

RIYAZUDDIN Appellant
Through: Mr. V.K. Upadhyay, Advocate.

versus

STATE GOVT. OF N.C.T OF DELHI Respondent
Through: Mr. Pawan Bahl, APP.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. Whether the Reporters of local papers may
be allowed to see the judgment?

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported
in the Digest? Yes

MUKTA GUPTA, J.

CRL. M.A. 405/2002 (EARLY HEARING)

The application is dismissed as infructuous.

CRL.A. 245/2001

1. The deceased Nasira Begum was married to Riyazuddin/the Appellant on 21st April, 1996. Though there was no demand of dowry at the time of marriage but after about a month of the marriage in-laws of the deceased

started making demands of dowry. Their demands were a refrigerator, colour T.V. and a gold chain etc. Nasira Begum was harassed for not fulfilling these demands to the extent that she was given physical beatings, the injury marks of which were shown by her to her father. However, the father thought that the matter would be settled. She was not even permitted to have cold water as she had not brought fridge in dowry.

2. On the instigation of the sisters of the Appellant, the Appellant used to give physical beating to her with danda and on one occasion he went to the extent of pressing her throat. She had visited her parental house on the Friday prior to the incident and complained about the harassment which she was subjected to by her in-laws. She requested her parents not to send her back as otherwise her in-laws would kill her. However, the Appellant came and took her along with him. As per the parents of the deceased besides her husband, her two sisters-in-law i.e., sisters of the Appellant and their husbands namely Yamin and Zamir also used to abuse her and taunt her for bringing insufficient dowry and instigate her husband/Appellant to give her beatings with dandas. On 7th June, 1998 the deceased was admitted to St. Stephens Hospital which information was given by the Appellant and his maternal uncle to Nasir Ahmed, the father of the deceased. They informed him that she was suffering from vomiting and therefore, was admitted in St. Stephens Hospital. The

deceased subsequently died on 10th June, 1998 and on post mortem being conducted the viscera was preserved. The CFSL report opined that the viscera contained a poisonous substance called aluminum phosphate poison. All the accused persons were sent for trial and charges for offences under Section 498A/34IPC and 304B/34IPC were framed. After recording of Prosecution evidence, statements of the accused persons and defence evidence, all other accused persons, except the Appellant were acquitted. The Appellant has been convicted for offences punishable under Sections 498A/304BIPC and awarded a sentence of Rigorous Imprisonment for 10 years under Sec. 304B IPC and to undergo Rigorous Imprisonment for two years and a fine of ₹3,000/- and in default of payment of fine to undergo simple imprisonment for two months under section 498A IPC. This is the judgment impugned.

3. Learned counsel for the Appellant contends that despite the fact that the deceased was hospitalized for three days no statement of the deceased was recorded by the doctor or the investigating officer. The deceased never complained about the harassment either on telephone or by letter before the death. The learned Trial Court disbelieved the evidence of prosecution witnesses and acquitted the co-accused persons. It is alleged that the father of the deceased was earning only ₹2,700/- per month and was admittedly spending ₹2,000/- towards house rent, thus, he could not have spent ₹1 lakh

on the marriage as alleged by the Prosecution. The essential ingredient for an offence under Section 304B IPC is that soon before the death there should be cruelty for demand of dowry. The same has not been proved by the Prosecution. As per the allegations the demands were only after 1½ month of marriage and thereafter there was no demand. The matter was compromised between the parties and after the compromise there is no allegation of harassment for demand of dowry. Reliance is placed on *Appasaheb and Anrs. Vs. State of Maharashtra, 2007 (2) AD SC 417* and *Narain Murthi vs. State of Karnataka, 2008 (2) JCC 1372* to contend that mere allegations of harassment are not sufficient and it is the duty of the prosecution to prove that soon before death the deceased was subjected to torture and harassment in relation to demand of dowry. It is contended that even giving credence to the testimony of the witnesses against the Appellant at best it constitutes an offence under Section 498A IPC only. The Appellant has already undergone a sentence of 4½ years. It is further stated that the Appellant is the only son and has an old and aged widowed mother. There is no one to look after the child as the mother has already died. Thus, a lenient view be taken against the Appellant.

4. Learned APP on the other hand contends that the statement of the deceased was kept pending by the SDM till she becomes conscious and since

she never regained consciousness her statement could not be recorded. The Prosecution witnesses especially PW1, PW4, PW7 and PW8 have categorically deposed about the demand of dowry and harassment in regard thereto soon before the death. PW11 and 12 have deposed about the cruelty inflicted by the Appellant on the deceased on 7th June, 1998 at 10.00 A.M. itself. The allegations of physical cruelty meted by the Appellant to the deceased are corroborated by the testimony of PW15 Dr. Ajit Kumar who in the MLC has recorded about the injury marks on the person of deceased. The fact that the deceased had ante mortem injury marks is also proved by PW18 Dr. Sarvesh Tandon who conducted the post mortem of the deceased. Besides abrasions, there were burn injury marks on the body of the deceased. As per the opinion of PW18, injury Nos. 1 and 4 could be caused by red hot iron object and injury No.2 could be caused by exposing the area over heated substance interposed by clothes. Thus, the factum that the deceased was harassed for demand of dowry soon before her death and she died an unnatural death within 7 years of her marriage has been proved. There being no merit in the Appeal, the same deserves to be dismissed.

5. I have heard learned counsel for the parties and perused the records. In the present case there are three sets of evidences which clearly inculcate the Appellant. The first is of PW1 Mohd. Shamim Khan, a friend of the father of

the deceased, PW4 Nasir Ahmed, the father, PW7 Nasir Ahmed, the brother and PW8 Mehraj Begum, the mother. All these witnesses have deposed that though there was no demand of dowry at the time of marriage, however, after about one month of the marriage there was a demand of fridge, TV and gold chain. Since these demands were not met the deceased was ill-treated and was beaten badly. The matter was got reconciled on many occasions with the intervention of friends and relatives but even after reconciliation the accused persons continued to harass her. The deceased Nasira Begum used to complain about the beatings and even showed injuries sustained on her body to PW4, PW7 and PW8. The suggestion given to these witnesses is that the Appellant had in fact divorced the deceased and it was desired that she should now be taken to the house of her father and mother however, this was not done by PW4 and PW8 and thus, the family of deceased threatened to implicate the Appellant and his family in a false case for daring to divorce her. The Appellant in his defence has produced witnesses who have stated that the father of the deceased was demanding money and since the deceased was not able to fulfill the same she was always perplexed and she was harassed by them. It may be noted that no such suggestion has been given to the prosecution witnesses. I find the contention of the learned counsel for the Appellant not borne from the evidence that after the compromise there was no

demand of dowry. From the evidence on record it is proved that there were repeated demands of dowry after a month of the marriage and the matter was sought to be reconciled repeatedly on many occasions but the accused persons continued demanding dowry. The witnesses have consistently stated that a week prior to the incident the deceased came to her parental house where she had expressed apprehension of being killed. Furthermore, on a perusal of their statements it is clear that there was a continuous demand for dowry and harassment in relation thereto by the appellant, as the deceased was incapable of fulfilling the demands raised by them. The testimony of PW1 who is the friend of PW4 also shows that there were demands of dowry and the deceased was given beating even in his presence. He also states that about 1 or 1½ month prior to the incident, the deceased told her that she will be killed.

6. I find no merit in the contention of the learned counsel for the Appellant that the prosecution has not been able to prove that soon before death the deceased was subjected to cruelty in relation to demand of dowry. “Soon before” is a relative term to be considered under specific circumstances of each case. The prosecution is required to prove that there is a proximate and live link between the effect of cruelty based on dowry demand and the consequential death. In a case of persistent demand and repeated harassment on that count, the proximate and live link can be said to be proved by the

prosecution. In every case the same is not required to be proved by proving a solitary incident immediately prior to the incident. In *Kans Raj vs. State of Punjab and others* (2000) 5 SCC 207 it was held:

“15. It is further contended on behalf of the respondents that the statements of the deceased referred to the instances could not be termed to be cruelty or harassment by the husband *soon before her death*. "Soon before" is a relative term which is required to be considered under specific circumstances of each case and no straightjacket formula can be laid down by fixing any time-limit. This expression is pregnant with the idea of proximity test. The term "soon before" is not synonymous with the term "immediately before" and is opposite of the expression "soon after" as used and understood in Section 114, Illustration (a) of the Evidence Act. These words would imply that the interval should not be too long before the time of making the statement and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In relation to dowry deaths, the circumstances 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 the alleged 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.”

7. The second set of evidence of PW 11 Kumari Mehnaz and PW12

Naeem, the younger sister and brother of the deceased, is a very crucial

evidence of the torture meted to the deceased. On the fateful day, that is, 7th June, 1998 they had gone to the house of the deceased at about 10.00 A.M. to get the deceased and the Appellant to their house as their elder sister Nazira was coming to meet the family on that day. These witnesses have stated that Riyazuddin restrained their sister from accompanying them and when she insisted he lifted a Pepsi bottle containing water and hit the same on her hand. When the deceased further insisted the Appellant told her if she had forgotten the previous beatings given to her. He further stated that if she dares to go he will kill her. When her sister still insisted, the appellant started beating her with danda and thus, they returned without the sister accompanying them. The evidence of these two witnesses shows that even on the date of the incident the deceased was assaulted.

8. The incident in the presence of PW11 and PW12 was about 10.00 A.M. on that day. The Prosecution has produced PW10 Dr. M. Ahmad who stated that about 2.30 or 2.45 P.M. when he had gone to offer namaz in the Masjid the Appellant Riyazuddin had came to him and informed that the condition of his wife i.e. the deceased was serious and he should reach. He went to the residence of the Appellant where the deceased was found unconscious. He gave her an injection and certain medicines and asked the Appellant to wait for some time so that she regains her conscious. Appellant Riyazuddin at 4:00

or 4:15 P.M. visited the doctor at his residence and informed him that the deceased had still not come to her senses who then advised them to take her to the hospital. In this case as per the postmortem report the cause of death was aluminum phosphate poisoning but what is very material is that PW15 Dr. Ajit Kumar who prepared the MLC Exhibit PW 15/A, PW16 Dr. Anil Batra who prepared the death summary and PW18 Dr. Sarvesh Tandon who prepared the postmortem report observed burn injuries on the person of deceased. PW18 in his cross-examination states that the external injuries mentioned in the postmortem report are superficial and are not sufficient to cause death in the ordinary course of nature, however, these injuries cannot be self inflicted. PW18 has categorically stated that the injuries would be different if any hot object is touched against the body of the person or the person falls on the hot object. He has also stated that the injury mentioned at serial no. 3 cannot be sustained while cooking food. At this stage it would be relevant to reproduce the opinion of PW18 Dr. Sarvesh Tandon:

“Cause of death kept pending. Viscera preserved and sent to FSL.

All injuries are anti mortem in nature and old in duration.

Injury No. 1 could be caused by red hot iron object.

Injury No. 2 could be cause by exposing the area over heated substance interposed by clothes.

Injury No. 4 could be caused by red hot iron object.

Time since death is about 13 hours approx.

Blood and viscera preserved for toxicological analysis.

My report is ex. PW-18/A which is in my hand bears my sign at point A and is correct. The application for postmortem was accompanied by 10 papers (inquest) which I had inspected and I had put my initials thereon and I identify my initials on inquest papers. The application is ex. PW-18/B which bears my sign at point A. I have seen the Toxicological report from CFSL, Hyderabad which states that Aluminum phosphide was detected in 1A, 1B and 1C exts, so in my view the cause of death was aluminum phosphide poisoning.”

9. All this leads to the inference that the deceased was assaulted by the Appellant with Pepsi bottle, danda and also inflicted burn injuries. As per the evidence discussed above all the ingredients of Section 304B IPC, that is, unnatural death, within seven years of marriage, and soon before death cruelty in relation to demand of dowry are fulfilled in the present case. The decisions cited by the learned counsel for the Appellant are on the facts of the said cases and in the present case the prosecution has discharged its onus of proving the case beyond reasonable doubt. There is ample evidence that soon before death, there was continuous torture and harassment in relation to demand of dowry resulting in the unnatural death of the deceased.

10. I also do not find any merit in the contention of learned counsel for the Appellant that since the co-accused have been acquitted on the basis of this evidence, the Appellant is also entitled to be acquitted. The learned Trial Court has acquitted the co-accused persons as there was no overt act attributed to them. As regards the Appellant there is ample evidence of overt act against

him. Moreover, in the absence of an appeal against acquittal of the co-accused by the State this Court will not in this appeal return findings. The acquittal of co-accused persons would not entail the Appellant to be acquitted of the charges framed against him.

11. I find no reason for taking a lenient view as prayed, in the facts of the present case and to reduce the sentence of the Appellant to already undergone, in view of the continuous harassment and gravity of torture meted out to the deceased.

12. I find no infirmity in the impugned judgment. The appeal is accordingly dismissed. The bail bond and the surety bond are discharged. The appellant be taken into custody to undergo the remaining sentence.

(MUKTA GUPTA)
JUDGE

NOVEMBER 30, 2010

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