

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

SUBJECT : Indian Penal Code

Judgment reserved on : November 17, 2008

Judgment delivered on : December 02, 2008

Crl. A. No.317/1999

Chanchal and Others ...

Through: Appellants  
Mr. K.B.Andley, Sr. Advocate with  
Mr.M. Shamikh, Advocate

versus

The State (NCT of Delhi) ...

Through: Respondent  
Mr. Amit Sharma, Additional Public  
Prosecutor for State

SUNIL GAUR, J.

1. The four Appellants herein are the husband, parents-in-law and brother-in-law (devar) of the deceased who have been convicted by the trial court vide impugned judgment dated 28th May 1999, for committing the offence of dowry death and vide order dated 31st May 1999, they have been sentenced to undergo rigorous imprisonment of fourteen years each under Section 304-B of Indian Penal Code and they are also sentenced to undergo rigorous imprisonment of two years each and to a fine of Rs.2,000/- each for commission of offence under Section 498-A of Indian Penal Code and in default of payment of fine, to undergo rigorous imprisonment of one year. In addition, they have been directed to undergo rigorous imprisonment for two years each and to pay a fine of Rs.1,000/- each for commission of offence under Section 406 of Indian Penal Code and in default of payment of fine, to undergo rigorous imprisonment for six months. However, aforesaid sentences have been ordered to run concurrently by the trial court.

2. Aforesaid conviction and sentence imposed upon the above referred four Appellants is impugned in this appeal.

3. The factual background of this case, as emerges from the record of this case, is as follows:- That Krishan Lal, father of Santosh Kumari (since deceased) had married his daughter Santosh Kumari with accused Sanjeev Kumar on 10-10-94 and had presented dowry articles according to his status at the time of marriage. Accused Smt Chanchal and Kewal Krishan are the mother-in-law and father-in-law of the deceased Santosh Kumari while accused Rajiv Kumar is the younger brother of her husband Sanjeev Kumar. Soon after the marriage, accused Sanjeev Kumar complained to Krishan Lal that he had given a

scooter though he should have given a motorcycle and made a demand of Yamaha motorcycle. Santosh Kumari also informed his father that accused Sanjeev and his mother had been demanding a colour TV and VCR and that he had presented a colour TV to the accused on the eve of Diwali. On 24th December, 1994 at about 6.10 pm, Krishan Lal received a telephonic call from accused Rajiv Kumar asking him to reach his house and Krishan Lal immediately reached the matrimonial house of his daughter at E-20, Ganesh Nagar and found body of his daughter lying on the bed. He asked Sanjeev Kumar to summon other family members and at about 8.00 pm when his wife Pushpa, mother-in-law Krishna Wanti and daughter Saroj came there, Pushpa disclosed to him that earlier on that very day, she alongwith her mother Krishna Wanti and sister-in-law Nirmala Devi had visited the house of the accused persons and at that time, accused Sanjeev and his mother had informed them that the in-laws of Rajiv had gifted a plot of land to them as a consideration of marriage and that father of Chanchal had also given a plot in her marriage and no such plot was given in the marriage of Santosh and Sanjeev. A case was registered and investigation taken up. Postmortem was conducted on the body of Santosh and the doctor gave the opinion that the cause of death was asphyxia consequent to hanging. The doctor also noticed ante-mortem ligature mark around the neck of the body having been caused by soft ligature material. After completion of investigation, charge-sheet was prepared and filed in the court concerned.

4. Before the trial court, these four Appellants had claimed trial as they chose not to plead guilty to the charges under Section 304-B/498-A/406/34 of Indian Penal Code framed against them.

5. At trial, twenty prosecution witnesses had deposed and the material evidence consisted of relatives of the deceased, i.e., her father - Krishan Lal, (PW-4), her grandmother - Smt. Krishnawanti, (PW-11), her mother Pushpa (PW-12), her aunt Nirmala, (PW-13) and her brother Sanjiv, (PW-14). Dr. K. Goel, (PW-1) has proved the Post Mortem Report Ex.PW-1/A of the deceased. Sub Inspector Pankaj Sharma, (PW-19) is the Investigating Officer of this case.

6. These four Appellants pleaded their innocence when they were questioned under Section 313 of Cr. P.C. by the trial court and basic version of appellant Kewal Krishan is as follows:- On 24.12.94 I left my duty at 9 a.m. for my duty. My son Sanjeev also left for his office at same time. At about 7.30 p.m. when I returned from my office I saw a large crowd outside my house. I also saw Kishan Lal, his wife and his other relatives present at my house. SI Jawahar Singh and ASI Ram Sewak were also present. I went to first floor of my house and found that Santosh was lying dead on double bed on first floor. Kishan Lal hugged me and also started weeping alongwith me. All the three other accused persons were taken away by police in a Jeep. In the meantime, SI Pankaj also came there. SI Pankaj Sharma in collusion with Kishan Lal removed the jewellery from the body of deceased and handed over the same to Kishan Lal. Two wheeler scooter, parked on ground floor was also given by SI to Kishan Lal after breaking its locks. They did so in order to hide the truth. Deceased was very fond of travelling by car. She used to say that her father had two cars and whenever she alongwith her parents used to go anywhere, they used to travel by car. Santosh was also fond of watching T.V. Accused

Sanjeev and deceased used to reside on first floor. Sanjeev used to draw a salary of Rs.1500/- p.m. He used to go to his office and then returned to house on foot. My other son accused Rajiv had never been engaged at any point of time till today and so question of his getting any plot of land in any engagement does not arise. I was married about 25 years back. My father-in-law used to work as Munshi with Sh. K.K. Mehra, Adv. Tis Hazari. I had not taken any dowry in my marriage. My father-in-law did not give any plot of land to me in our marriage or at any point of time thereafter. My wife Chanchal does not hold any plot of land either in Delhi or outside Delhi. All the allegations leveled by Complainant and his family members are false, frivolous and concocted. Both SI Pankaj and Kishan Lal had concocted a false story and implicated us falsely. SI Pankaj had recorded my statement in P.S. and same were signed by me. On 6.3.95 I was bailed out by the court. On 20.3.95 I alongwith my son Rajeev were busy in doing pehrvee of our case. On that day I had also gone to the house of my sister. At 8 p.m. while I was present in the house of my sister, one of my neighbourer informed me on telephone that SI Pankaj had come to my house alongwith Kishan Lal and removed the articles lying in my house after breaking open the locks and that they had also taken away the keys of locks with them. On this I alongwith my brother-in-law (Jija) came to my house to see what had happened. We found that our locks at the main gate of our house had been broken and replaced by new lock. I enquired from my neighbourer Arjun Singh in that regard. He also confirmed that SI Pankaj alongwith Kishan Lal and 4/5 other persons come to my house and broken locks and removed articles. SI Pankaj did all this illegally and in collusion with Complainant. I was not informed by SI Pankaj beforehand that he wanted to recover any articles from my house despite the fact that I was on bail. I sent telegram to Commissioner of Police, Delhi, certified copy of the said telegram is Ex.DW1/1, receipt of Ex.DW1/2 and Ex.DW1/3. I also placed on record, Photostat copy of certificate dt.28.1.95 issued by my office regarding my presence in the office on relevant date, same is marked DX.

7. After the trial, the appellants have been convicted and sentenced as already indicated above.

8. Both the sides have been heard in this appeal and with their assistance, the evidence on record has been perused.

9. On 24th December, 1994, Santosh wife of appellant Sanjiv had died unnatural death i.e. had committed suicide by hanging in her matrimonial house and it has come in the evidence of the parents of the deceased that she had married appellant Sanjiv, hardly two and a half months (i.e. on 10th October, 1994) prior to her death. According to the prosecution the deceased was subjected to cruelty and harassment, on account of bringing inadequate dowry, which led to the unnatural death of the deceased.

10. As per the evidence of the parents of the deceased i.e. PW-4 and PW-12, Santosh was harassed by the appellants within few days of her marriage for not bringing colour TV. However, it has come in the evidence of the above-said witnesses that on the occasion of Diwali in the year 1994, a colour TV was given but then it was said by the appellants that VCR be also given. Not only this, it is evident from the evidence of the

above-said witnesses that there was also a demand of plot by the appellants, particularly by the mother-in-law of the deceased, who is said to have declared that in the engagement of her son/appellant Rajiv, a plot of land was given. However, parents of the deceased had expressed their inability to give a plot of land and there was mental harassment of Santosh on that account.

11. Aforesaid evidence of the parents of the deceased receive ample corroboration from the evidence of Sanjeev (PW-14), brother of the deceased and Smt. Krishna Wati (PW-11), grandmother of the deceased and also from the evidence of Smt. Nirmal, (PW-13), aunt of the deceased in respect of the harassment to the deceased on account of bringing inadequate dowry. However, it has been pointed out by the defence that the demand of colour TV was not by appellant-husband alone but was a joint demand made by the appellant-husband and his wife (since deceased). Since this demand was met, therefore, nothing turns on it and infact the demand for the VCR was by the appellants and the father of the deceased claims to have refused to meet the said demand. Similarly the choice of motorcycle instead of scooter may have been of appellant-husband and his wife but it is not the prosecution case that on this account, the deceased was harassed or tortured by the appellants/ accused. In a case like present one, the tendency to exaggerate facts, cannot be made the basis to reject the prosecution case out rightly as it is the duty of the courts to sift the grain from the chaff. The assertion of the father of the deceased of appellant- husband leaving the house in anger upon demand of motorcycle being not met, may be an improvement but it does not wash away his entire evidence.

12. Upon close reading of the evidence of the material witnesses i.e. the parents, brother, grandmother and aunt of the deceased, it is found that the subfactum of the prosecution case stands firmly established from their evidence justifying the conviction/sentence imposed upon these appellants for committing offence under Section 498-A/34 of the Indian Penal Code by the trial court. Thus, conviction and sentence imposed upon them under Section 498A/34 of IPC is hereby upheld.

13. As regard the offence of dowry death is concerned, to bring this case within the ambit of Section 304-B of the Indian Penal Code and to attract the presumption under Section 113-B of the Evidence Act, it is incumbent upon the prosecution to prove that the deceased was subjected to cruelty/harassment soon before her death.

14. In the case of Kaliyaperumal and Anr. Vs. State of Tamil Nadu reported at 2003 (7) JT (S.C.) 392, the Apex Court has observed as under:- A conjoint reading of Section 113B of the Evidence Act and Section 304B Indian Penal Code shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the death occurring otherwise than in normal circumstances. The expression soon before is very relevant where Section 113B of the Evidence Act and Section 304B Indian Penal Code are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by prosecution. Soon before is a relative term and it would depend upon circumstances of

each case and no strait-jacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113B of the Evidence Act. The expression soon before her death used in the substantive Section 304B Indian Penal Code and Section 113B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression soon before is not defined. A reference to expression soon before used in Section 114. Illustration (a) of the Evidence Act is relevant. It lays down that a Court may presume that a man who is in the possession of goods soon after the theft, is either the thief has received the goods knowing them to be stolen, unless he can account for his possession. The determination of the period which can come within the term soon before is left to be determined by the Courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression soon before would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live-link between the effect of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough nor to disturb mental equilibrium of the woman concerned, it would be of no consequence.

15. It is the prosecution case that on the day of incident i.e. on 24th December, 1994, mother, grandmother, aunt and Bhabhi of the deceased had gone to the house of the appellants/ accused in the noon time to extend an invitation for dinner at the house of the grandmother of the deceased. Since the statement of the mother of the deceased was recorded by the SDM, therefore, it would be appropriate to refer to the evidence of Smt Pushpa (PW-12), mother of the deceased. She has stated in her evidence that the four appellants/ accused had started quarreling with them and had not allowed them to meet Santosh because the plot of land was not given. However, scrutiny of the evidence of this witness reveals that she has given evasive answers on this material aspect and when she was confronted with her statement recorded by the SDM, it was found that she had material improvement regarding appellants/accused quarreling with her and with her mother etc. for not giving plot of land and for not allowing them to meet the deceased. She has stated that she was not allowed to properly meet the deceased. Regarding the return of the fruits and sweets taken by the mother of the deceased to the house of the appellants, it is found that she has made improvement on the above said material aspect also. Although the evidence of the mother of the deceased as well as the grandmother and aunt of the deceased is by and large reliable but it has been found that they have given evasive answers regarding their meeting with the appellants on the day of incident in the noon time.

16. Upon giving thoughtful consideration to the evidence of the aforesaid material witnesses, there remains no doubt that their evidence to establish the necessary ingredients of harassment of the deceased soon before her death does not inspire the confidence of this Court. Apart from the improvements made by the material witnesses on this crucial aspect, there is an admission of the mother of the deceased that about three or four days prior to this incident, the deceased-wife had gone with the appellant-husband

to Vaishno Devi for Mata darshan which apparently rules out the ill treatment of the deceased soon before her death.

17. There is another aspect which needs to be noticed. The tenor of the allegations leveled in this case is against the mother-in-law and husband of the deceased. The demand of plot is attributed to the mother-in-law and of motorcycle to the husband of the deceased. What stands proved from the evidence on record is that the two appellants i.e. the mother-in-law and the husband of the deceased were the main accused who had abetted the deceased to commit suicide in this case and thus the offence committed by them falls within the ambit of Section 306 read with Section 34 of the Indian Penal Code and not under Section 304-B read with Section 34 of the Indian Penal Code. There is no worthwhile evidence on record to connect the remaining two appellants i.e. the father-in-law and brother-in-law (dever) of the deceased with the offence of dowry death or of abetment of suicide of the deceased.

18. The immediate cause of provocation for the young bride to commit suicide was in all probability the insulting behaviour of her mother-in-law towards her mother and grand mother at noon time on the day of this unfortunate incident i.e. of return of fruits and sweets and of the deceased not being able to freely interact with her mother on the day of this incident. The background reality which cannot be ignored is the economic disparity between the family of appellant/accused and the deceased family which frustrated the deceased. All this impels this court to alter the nature of offence from dowry death to abetment of suicide.

19. In the case of Hira Lal and others Vs. State (Govt. of NCT) Delhi reported at 2003 (7) JT (S.C.) 596 the necessary ingredient of subjecting the deceased to cruelty soon before her death was missing and the Apex Court had observed as under: 16. On the facts of the case even though it is difficult to sustain the conviction under Section 304B IPC, there are sufficient materials to convict the accused-appellants in terms of Section 306 IPC along with Section 498A IPC.

20. In the case of K.Prema S.Rao Vs. Yadla Srinivasa Rao reported at AIR 2003 S.C. 11 the Apex Court has held that although the accused was charged for offence under Section 304B/498A of IPC, but still he could be convicted and sentenced under Section 306 of the IPC.

21. As a result of the aforesaid narration and legal position, the conviction of appellants Chanchal and Sanjeev stands altered from Section 304-B/34 of the Indian Penal Code to Section 306/34 of the Indian Penal Code and as a consequence thereof, the sentence imposed upon them also stands altered accordingly. However, the conviction of the appellants Kewal Krishan and Rajiv under Section 304-B/34 of the Indian Penal Code is rendered unsustainable and is accordingly set aside. The evidence on record does not support the conviction and the sentence imposed upon the appellants for offence under Section 406/34 of the Indian Penal Code and thus the same is set aside.

22. Nominal rolls of the appellants indicate that the two appellants i.e. Chanchal (mother-in-law) and Sanjeev (husband of the deceased) have remained behind bars in this case for a period of about six years (to be precise one month less than six years) and their sentence was suspended during the pendency of this appeal and they are on bail. They have already faced trial in this case for about one decade and a half. Appellant Chanchal is said to be aged about sixty years and she claims to be an ailing lady. Appellant Sanjeev claims to be a middle aged person and is said to be the bread earner for his parents. Both of them have already undergone about six years of sentence and in my opinion it would serve the ends of justice if the sentence awarded to them for offence under Section 306/34 of the Indian Penal Code is maintained for the period already undergone by them i.e. five years and eleven months. They are on bail. Their bail bonds and surety bonds are discharged.

23. As per the nominal rolls of appellants Kewal Krishan and Rajiv, they have already remained behind bars for about two years approximately, whereas they have been sentenced under Section 498-A/34 of the Indian Penal Code to Rigorous imprisonment for two years each. Appellant Kewal Krishan was an Upper Divisional Clerk in Public Works Department and by now he is said to be on verge of retirement and it is stated that he is ailing. To my mind, the sentence of about two years (precisely of one year, ten months and fourteen days) for offence under Section 498-A/34 of the Indian Penal Code would meet the ends of justice. It is ordered accordingly.

24. Nominal roll of Appellant Rajiv reveals that he has remained behind bars for one year, ten months and nineteen days out of the substantive sentence of two years awarded to him for offence under Section 498-A/34 of the Indian Penal Code. He is said to have been settled in life and is in his early thirties and it would be too harsh to send him to jail to serve out remaining sentence of about one month and eleven days. Therefore, his substantive sentence for the aforesaid offence stands reduced to the period already undergone by him in judicial custody. Appellants Kewal Krishan and Rajiv are on bail as their sentence during the pendency of this appeal was suspended. Since their sentence stands reduced to the period already undergone by them, therefore, their bail bonds stands discharged.

25. This appeal stands partly allowed to the extent indicated above.

26. With aforesaid directions, this appeal as well as pending application(s) if any stand disposed of.

Sd./-  
SUNIL GAUR, J

December 02, 2008