

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

Decided on : 26.03.2012

+ **Crl. A. 296/2011**

STATE Appellant
Through : Ms. Richa Kapoor, APP.

versus

SANJEEV JAIN & ORS. Respondents
Through : Sh. O.P. Aggarwal, Advocate.

MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE S.P. GARG

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

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1. This appeal by leave challenges an acquittal recorded by learned Additional Sessions Judge dated 21.11.2006 whereby the respondents, (arrayed as accused before the Court), were acquitted in respect of the offences alleged against them, punishable under Sections 304B and 498 IPC.

2. The prosecution case was that Monika Jain (the deceased) was married to the first accused, Sanjeev Jain, on 24.02.1998. Police Post Pitam Pura received information on 24.04.2000 from Dr. S.D. Sharma, (PW-2), of Sarvodaya Hospital that Monika Jain was admitted in the hospital, and died due to poisoning. It is an undeniable fact that the accused Sanjeev Jain had admitted her to the hospital. On receipt of information, SI Rajpal Singh (PW-19) was told to investigate into the matter; he reached the hospital and collected MLC. It is stated that since the case concerned the death of a

married woman within seven years of the marriage, he brought it to the notice of the Sub-Divisional Magistrate (Model Town). He stated that the SDM was informed about this aspect immediately upon the witness becoming aware of it. The SDM proceeded to record the statements of the deceased's relatives, i.e. the father, PW-8; brother-PW-12; brother-in-law-PW-13; mother (PW-14) and PW-21 (maternal uncle-*Mama*). The police also seized several articles and took them into possession and proceeded with the investigation during which the postmortem report, serological report and other scientific evidence and reports were collected. The accused, who had been arrested in the meanwhile, were charged with having committed the offences they were ultimately tried for. They denied guilt and claimed trial.

3. During the proceedings before the Trial Court, the prosecution relied upon the testimonies of 23 witnesses and also produced several exhibits. After recording these, the Trial Court put queries to the respondents under Section 313 Cr.PC. The respondents relied on the testimony of one Manav Sharma, DW-1. Upon an overall consideration of all these, the Trial Court concluded that the prosecution had not been able to establish that any cruelty on account of dowry harassment soon before the deceased's death had been perpetrated on her by any of the accused. The Trial Court was also considerably influenced by the circumstance that though the incident was reported on 24.04.2000, the First Information Report (FIR) and the statements of the relevant witnesses were recorded on 25.04.2000. According to the Trial Court, this delay was fatal; besides the prosecution was unable to explain the cause for the delay. The Trial Court also noticed that during the evidence, the suicide note setting-out the reasons for the

deceased taking her own life had been brought on record. The prosecution witnesses had tried to explain that circumstance by stating that the note had been obtained from the deceased in advance in the course of some *Panchayat* held earlier to resolve the disputes between the deceased and the in-laws. The Trial Court disbelieved the prosecution version and preferred to rest its conclusions as regard the cause of death on the suicide note which was proved to be that of the deceased.

4. Learned APP submits that in the present case, admittedly, the unnatural death or suicide took place within two years of marriage and there was sufficient material on the record to infer that the deceased was subjected to repeated cruelty and dowry harassment. Learned counsel emphasized that the rationale for the acquittal were some minor contradictions in the statements of prosecution witnesses. Learned counsel argued that the main reason for the acquittal, i.e. the delay, was something which ought not to have influenced the Trial Court in concluding that the prosecution story was unbelievable. In this context, it was submitted that the circumstance of availability of the SDM, ought not to have been the reason why the prosecution witnesses should have been disbelieved. On the other hand, submitted learned counsel that all the material prosecution witnesses, i.e. PWs-8, 9, 13, 14 and 21 supported each other, particularly as to the demands made from the deceased and her family to prove dowry harassment, as a condition for establishing offence under Section 304B IPC. They were also consistent about the kind of cruelty meted out to her.

5. It was argued that the Postmortem Report clearly proved that the deceased had died an unnatural death – a fact not disputed by any of the accused. The postmortem was conducted on 25.04.2000 at around 12.00

Noon. According to the doctor conducting it, PW-1, the approximate time of death was 24 hours before the commencement of the proceeding, i.e. around 12 AM on 24.04.2000. Since the accused were in the premises from where the deceased's body was taken, they owed an explanation how and under what circumstances she committed the suicide. Besides, argued learned APP, the deposition of PW-1 and the Postmortem Report, Ex. PW-1/A also established that the stomach contained about 250 c.c. of oily fluid and strongly smelt of kerosene oil. The doctor had furnished an opinion that the death was due to some toxic substance – substantiated by the viscera report. Learned counsel submitted in this regard that death was the result of insecticide consumption. The deceased had apparently taken *Baygon* fluid or spray, a commonly used insecticide.

6. Learned APP emphasized that the defence story about a suicide note and letters could not be taken on the face value in the light of the prosecution witnesses' explanation recorded during the proceedings. It was submitted that the cause of death was not really the one mentioned in the suicide note and that the note produced during the trial, according to the prosecution witnesses – i.e. the deceased's relatives were the result of a *panchayat* proceeding where some resolution of the disputes between the deceased's in-laws and her had taken place. It was properly explained and ought to have been taken into account and not made the basis for the acquittal recorded by the Trial Court.

7. Learned counsel for the respondents urged that the impugned judgment does not disclose any substantial or compelling reason why the Trial Court's findings ought to be interfered with. Elaborating on this, it was submitted that even though all the witnesses were available at the time of

death or soon thereafter, the statements of none of them were recorded by the police. Learned counsel here emphasized that PW-19 specifically deposed that the SDM had been informed soon after he became aware about the death the same day, i.e. on 24.04.2000. It was submitted next that in order to establish the offence under Section 304B IPC, not only was the prosecution under an obligation to prove the guilt to the deceased but also that it was coupled with dowry demands soon before the occurrence of the unnatural death. Without proof of these foundational facts, the presumption which every Court is entitled to draw, cannot be taken recourse to. It was further submitted that the testimonies of all the prosecution witnesses were coloured by the fact that they were close relatives of the deceased. If in fact, they had any cause or grievance, nothing prevented them from approaching the police earlier. Furthermore, they made no attempt to report the cause of death soon after becoming aware about the unnatural death, on the date of its recovery, i.e. 24.04.2000. Lastly, it was urged in this context that the Trial Court also took note of the fact that the deceased was taken to the hospital by the accused Sanjeev Jain himself which was not consistent with his cruel behavior and alleged demand for dowry, being the reason for her suicide. It was submitted that the Trial Court noticed major contradictions in the testimonies of material prosecution witnesses. Most of them did not corroborate each other or even what they stated during the investigation. Moreover, argued counsel, lack of any specific details as to the approximate time of the demand, put question marks over the allegations.

8. It was urged that the Trial Court was perfectly justified in returning the finding that the deceased committed suicide for her own reasons. In this regard, learned counsel relied upon the suicide note, Ex. PW-PY/B and

stressed the fact that no reason was given why she committed suicide. More importantly, the note did not implicate any of the accused. Learned counsel also submitted that the Trial Court took note of the fact that Ex. PW-Y/A established that the admitted handwriting of the deceased (collected during the investigation) and produced in the Trial Court as Ex. PX-1 to 3 had matched with the handwriting of the suicide note, Ex. PW-Y/B.

9. The prosecution in this case, in order to prove dowry demand and the attendant cruelty, relied upon the testimony of several witnesses, who were the deceased's relatives. These demands were that a sum of Rs. 1 lakh had been asked from the deceased's parents and relatives; a scooter was demanded by Raj Rani Jain; golden ring and chain had been demanded by the sisters-in-law of Monika Jain. It was also alleged that the mother-in-law demanded a washing machine. The Trial Court analysed the evidence of each material witness with regard to these demands separately. It was noticed that PW-8, the deceased's father had made improvements with regard to the demand for Rs. 1 lakh, scooter and gold ring, which was the reason why his deposition was not accepted. Likewise, PWs-9, 11, 12 and 21 did not depose with regard to demand for Rs. 1 lakh. So far as the washing machine and other articles are concerned, the Court analysed that PW-8 could not specify when such demand was first raised. Importantly, in his statement recorded before the SDM, Ex. PW-8/A, this aspect had been omitted. The Court also observed that if a washing machine had been purchased – (as alleged by the witness, who claimed that it was bought on the basis of instalments) – there was lack of evidence in the form of documentation to support the claim. Similarly, as far as the demand for other articles are concerned, PW-8 was singularly silent about the statement

recorded before the SDM. As regards the articles demanded by sisters-in-law and mother-in-law are concerned, the Court did not believe them at all. The Trial Court has rendered an exhaustive and meticulous findings on all these aspects from paras 18 to 21 of the impugned judgment.

10. On the question of harassment, the Court noted that PW-8 had claimed that the deceased told him that she was not happy in her matrimonial home and that her husband used to beat her at the instance of his sisters. He also stated that the deceased had telephonically informed his brother, Pramod that she was kept hungry for several days and she ought to be taken back. The witness claimed that complaints had been written and photocopies of some had been seized. In the cross-examination, PW-8 admitted that he was not on speaking terms with his brother because of strained relations with him, which had existed even during the marriage, and till the death of Monika. This improbabilized his testimony. The Court also noticed that an attempt to co-relate the testimony about cruelty and beating – allegedly narrated to Pramod Kumar, was unreliable since it apparently occurred one year before the incident or death of Monika. Similarly, the deposition of PW-9 was contrary to that of the father. PW-12 did not speak about any telephonic talk between his uncle and his sister or that his uncle had visited Monika's matrimonial home. Having regard to these and the testimony of PW-13, the mother, who also deposed in a manner inconsistent with the other witnesses, the Trial Court held that the question of cruel treatment had not been proved.

11. During the trial, the prosecution had produced the suicide note and an attempt was made to explain it by saying that a *Panchayat* was held a year earlier. The Trial Court noticed this part of the evidence and held as follows:

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From the suggestions put to PW13 it would transpire that prosecution version is that suicide note was written about a year prior to the convening of Panchayat. Since Panchayat is alleged to have been convened at the house of Kailash Chand Jain, in the given facts and circumstances, testimony of Kailash Chand Jain, the mediator was of much significance. But prosecution has not examined the mediator, as already noticed above and with his non examination there is no corroboration from independent source on the story of prosecution that any suicide note was shown by any of the accused in any such Panchayat.

On behalf of the State, it has been contended that the accused got written suicide note from Monika much prior to her death so as to save themselves from legal punishment in case of commission of suicide by Monika. This argument is without any merit, when considered in view of the evidence available on record.

Had any such note been got written by any of the accused, either Monika or her parents or her brother or any other relative could set the law into motion by informing the police or filing a criminal complaint in this respect. But there is nothing on record to suggest that anyone of them took any step to set the law into motion against any of the accused. Prosecution version is that after getting suicide note executed from Monika, the accused persons kept the same with them. It is not believable at all.

PW11 Pawan Kumar Jain deposed that once Sanjeev Kumar had shown him one paper. But in the same sentence, the witness stated that he had not gone through the paper.

Had any suicide note been got written by the accused one year prior to the occurrence, PW12 Vishal Jain, brother of Monika, would have been the last person not to depose about

suicide note. But the fact is that PW12 did not state anything about any suicide note.

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12. On the question of cruelty soon before death, the Trial Court held as follows:

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CRUELTY SOON BEFORE DEATH:

25. Monika was brought to Sarvodaya Hospital on 24.04.00 at 12.50 p.m. There she was declared brought dead. Pw 14 Smt. Promila Jain, mother of Monika deposed that on 24.04.00 at about 8 am. her daughter told her telephonically that all was well at her house. In view of this statement of PW14 and there being nothing else on record to the contrary, it cannot be said that Monika was subjected to cruelty or any kind of harassment by any of the accused soon before her death.

It is true that PW14 Smt. Promila Jain deposed in court that after receipt of telephonic message from Neetu, sister in law of Monika, she reached her matrimonial home but she was not allowed to enter the house. She further deposed that dead body of her daughter was being dragged from third floor of the house. In this respect, when we advert to the statement of her son PW12 Vishal Jain, it appears that he had accompanied his mother to the house of his sister Monika and found Monika Jain being taken to hospital by her husband Sanjeev Jain. Thereafter, he and his mother also reached Sarvodaya Hospital. The witness displayed ignorance if anything else happened in his presence. He could not say how his sister left this world. He also did not state that dead body of his sister was being dragged by anyone from the third floor of the house. Therefore, no reliance can be placed on the statement of Smt. Promila Jain when she deposed that dead body of Monika Jain was being dragged.

Accused have examined DW1 Manav Sharma. According to DW1, once he had accompanied Monika (since deceased) to a Cinema Hall. At that time, husband of Monika all of a sudden met them and gave him beatings. Husband of Monika then went to his house and complained his parents. According to DW1, it so happened 4/5 years prior to making of his statement in court (statement of the witness was recorded on 12.05.2005). From the statement of DW1, it appears that Monika accompanied him to theatre to see a movie and her husband thrashed him (DW1) as he was seen in the company of his wife.

In the given circumstances, simply because Monika Jain died at her matrimonial home within 7 years of her marriage, no presumption within the ambit of Sections 113 A or 113 B of Indian Evidence Act, can be drawn against any of the accused, and the contention raised on behalf of the State to draw such a presumption is without any merit.

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13. As regards the submission by the learned APP that delay in this case ought not have been a determining or vitiating factor, we are of the opinion that the findings of the Trial Court cannot be faulted as unreasonable. Although there is a body of case law to the effect that the near relatives of a young wife who takes her own life or dies an unnatural death would be traumatized and cannot be expected to cover all the facts when the statements are recorded, at the same time, the Court has to be conscious of the fact about what is the earliest available opportunity for the police to record such a statement. In this case, PW-19 stated that the SDM, PW-20 was informed on 24.04.2000 itself. The latter witness does not deny this fact. Admittedly, the statements of all witnesses were recorded on the next day,

i.e. after discovery of the suicide note, on 25.04.2000. No explanation is forthcoming about this significant aspect during trial (which is unbelievable) that all relatives of the deceased (and not only the parents) were in such state of shock as to not mention even once that they suspected the accused or any of them. The failure to record the FIR earlier than 24 hours after the death, is, therefore, most suspicious.

14. As far as the explanation given by the prosecution for the suicide note was written, we are of the opinion that the Trial Court's findings are sound. The explanation of the prosecution witness apparently was that the note was written much earlier and that all of them were aware of it. During the course of trial, it transpired that many witnesses contradicted each other and were also not specific as to who all were present when the note was written or whether it was written in presence of strangers. No independent witness was also produced, who acted as *panch*. The FSL report in this case established that the handwriting on the suicide note matched with the admitted handwriting of the deceased. This is an important circumstance which weighed with the Trial Court in holding the cause of death was not unnatural but something that the deceased took her own life. As far as the allegation of facilitating consumption of insecticide is concerned, there is no doubt that the FSL report confirms presence of right index finger print of one of the accused Neetu Jain. However, the report also states elsewhere that none of the prints collected were fit for comparison. Even if the Court were to take the report at face value and assume that finger prints were that of the accused, there is no denial of the fact that such an insecticide is normally used in households and would have been there in the normal course of events. Moreover, the viscera report does not confirm to the existence of

Orgophorum insecticide (Finit), which was found in the contents of the box which contained finger prints of Neetu Jain. On the other hand, the viscera report confirmed to traces of Baygon, i.e. Carbomate insecticide in the deceased's stomach.

15. This Court also notices that the deceased had given birth to an infant male child just about a year before her death. Having regard to the totality of the circumstances, and the extremely sketchy nature of evidence, we are of the opinion that the mere circumstance that suicide was within seven years of marriage, was an insufficient ground for the Court to have taken recourse to Section 113-B, Evidence Act and relied on Section 304-B IPC. All the other elements required, i.e. cruelty, harassment, demands for dowry and cruelty soon before the unnatural death had not been proved, much less proved beyond reasonable doubt.

16. This Court is bound to apply the mandatory yardstick while considering the appeals and petitions challenging acquittals, i.e. existence of substantial and compelling reasons (*Sunil Bajaj v. State of M.P.* AIR 2001 SC 3020; *Gurucharan Kumar and Anr.v. State of Rajasthan* AIR 2003 SC 992 and *State of U.P. v. Madan Mohan and Others* AIR 1989 SC 1519). The prosecution had tried to rely upon the photocopies of two letters seized by the police on 15.05.2000. The general purport and effect of these letters – allegedly written by the deceased to her father was that she was being treated with cruelty and harassed for dowry by the accused. The Trial Court discarded this, holding that originals had not been produced and that the prosecution made no attempt to match the handwriting on even these photocopies with the admitted handwritings of the deceased. Also, the photocopy of such alleged letters were seized much later – three weeks or so

after the event. We are satisfied that in the present case, the reasoning of the Trial Court is sound and logical. Having regard to the nature of evidence produced before it and the important circumstance of the delay in recording the FIR as well as the existence of suicide note, this Court is of the opinion that the conclusion drawn by the Trial Court was the only reasonable one under the circumstances. The appeal consequently has to fail and is dismissed.

S. RAVINDRA BHAT
(JUDGE)

S.P. GARG
(JUDGE)

MARCH 26, 2012
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