



2026:DHC:5129-DB



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

Reserved on: 30.03.2026
Pronounced on: 18.06.2026

+ CRL.A. 473/2002
R.SANTOSH KUMARAppellant
Through: Mr. Vineet Dhanda, Amicus
Curiae with Ms. Ishika
Ahluwalia, Adv.
versus

STATE (NCT OF DELHI)Respondent
Through: Mr. Aman Usman, APP for
State with Mr. Manvendra
Yadav, Advocate with Insp.
Sandeep, PS-Delhi Cantt.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MR. JUSTICE RAVINDER DUDEJA
J U D G M E N T

RAVINDER DUDEJA, J.

1. The present appeal is filed by the appellant against the judgment of conviction dated 06th April, 2002 and the order on sentence dated 30th April, 2002 passed by the learned Additional Sessions Judge, New Delhi [**“trial court”**], in Sessions Case No. 40/1997, arising out of FIR No. 159/1997 registered under Sections 498-A/302/34 of the Indian Penal Code, 1860 [**“IPC”**] at Police Station Delhi Cantt.

Brief Facts

2. The prosecution case, in brief, is that on 23rd April, 1997, information was received from Military Police CMP through Havaldar Ram Pal Singh about commission of a suicide at 140/2 Shekhawati



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Line, Delhi Cantt.. The said information was recorded vide DD No. 22A, SI Dinesh Kumar (PW-19) alongwith Ct. Shamsher Singh (PW-9) proceeded to the spot and found the dead body of Ganga- wife of appellant on the first floor of the house. Crime team was called and photographs were taken.

3. Since the death of Ganga [**“deceased”**] had occurred within seven years of her marriage, the Sub-Divisional Magistrate [SDM], Vasant Vihar was requested for conducting the inquest proceedings. The parents of deceased were also informed and on instructions of the learned SDM, the body of the deceased was ordered to be preserved for 72 hours at Safdarjung Hospital Mortuary for awaiting the arrival of parents of the deceased.

4. During investigation, SI Dinesh Kumar recovered one can of kerosene oil, pieces of burnt clothes and one match box [Ex. PW 3/A]. The exhibits were sent to Forensic Science Laboratory [FSL] for examination. On 26th April, 1997, the brother of deceased, namely, V. Venugopalan Nair [PW-7], and the brother-in-law of the deceased, namely, B. Sumaraj [PW-12], identified the dead body of the deceased Ganga. Thereafter, the SDM ordered the post-mortem of the dead body.

5. The SDM (PW-18) recorded the statement of PW-7 V. Venugopalan Nair on 26th April, 1997, wherein he stated that his sister (deceased Ganga) got married to appellant R. Santosh in December, 1992, and 200 grams of gold ornaments and a house built on 12 cents of land was given to Ganga. He further stated that Ganga had told him about dowry harassment and physical abuse she faced from her



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husband/appellant and her mother-in-law. He stated that Ganga told him that the appellant insisted her to ask her parents to give Rs. 500/- monthly and also the desire of mother-in-law to sell Ganga's land. He suspected that his sister Ganga had not committed suicide, but was rather murdered.

6. On the basis of the statement/complaint of PW-7 V. Venugopalan Nair [Ex. PW 18/A], the SDM made his endorsement and case was registered under Sections 498-A/304-B IPC at Police Station Delhi Cantt.

7. During the course of investigation, the site plan of the place of occurrence [Ex. PW19/A] was prepared and statements of several witness including family members of the deceased, neighbours, police officials, medical witnesses and other formal witnesses were recorded.

8. The post-mortem report [Ex. PW13/A] was received on 30th May, 1997, which opined that the death was not by burning and that the burn injuries were post mortem in nature. Upon receipt of chemical analysis report, doctor gave the subsequent opinion (Ex. PW-13/B) that the cause of death in this case was "asphyxia caused by smothering."

9. On 2nd June, 1997, the SDM moved an application in the office of the appellant for handing over the custody of the appellant [Ex. PW 19/C]. The custody of the appellant was given to SDM by Army Authorities. The appellant was then formally arrested. Upon interrogation, he made a disclosure statement [Ex. PW 1/A].

10. During investigation, SI N.R. Nair (PW-20) went to Trivandrum at Ganga's house on 18th August, 1997 where they met



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the family of the deceased Ganga as well as her son, namely, Master Unikuttan (also known by the name Siri Raj). SI N.R. Nair recorded the statement of the child, who is the only alleged eye-witness of the incident, in both Malayalam and Hindi. The child stated that his father beat her mother and pressed her face and neck on the fateful day. He also stated that his father then poured oil on her mother and lit the stove. SI N.R. Nair then showed matches to the child which he identified as stove. The statements of Sudha, her husband Rajinder, and of Sumaraja were also recorded by PW-20.

11. Accused K. Amruthamma, mother in law of deceased, was arrested on 27th August, 1997.

12. Upon completion of investigation, charge-sheet was filed on 27th August, 1997 under Sections 498-A/302/34 IPC against the appellant and his mother, namely, Smt. K. Amruthamma.

13. The learned trial court vide order dated 27th May, 1998, framed charges under Sections 498-A/302 IPC against the appellant but discharged the accused K. Amruthamma.

14. In order to substantiate the charges, the prosecution examined 21 witnesses. Statement of accused R. Santosh was recorded under Section 313 of the Code of Criminal Procedure [“Cr.P.C.”], wherein, he pleaded innocence. He examined three witnesses in his defence.

15. Upon conclusion of trial and on appreciation of the evidence on record, the learned trial court *vide* judgment dated 06th April, 2002 convicted the appellant for offences under Sections 302/498-A IPC and *vide* order on sentence dated 30th April, 2002, appellant was sentenced to undergo life imprisonment with fine of Rs. 2,000/-, in



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default, to undergo Simple Imprisonment [SI] for one month for offence under Section 302 IPC. He was also sentenced to undergo Rigorous imprisonment for one year alongwith fine of Rs. 1,500/-, in default to undergo SI for one month for offence under Section 498-A IPC.

16. Feeling aggrieved, the accused R. Santosh preferred the present appeal.

17. The sentence of the appellant was suspended by this Court *vide* order dated 28th January, 2003.

Submissions of counsel for Appellant

18. The learned counsel for the appellant has assailed the impugned judgment of conviction, submitting that the learned Trial Court failed to appreciate the evidence in its proper perspective and convicted the appellant merely on conjectures and surmises. It was contended that the prosecution case suffered from serious infirmities and contradictions, which render the conviction unsustainable.

19. It was argued that there was an undue and unexplained delay in lodging the First Information Report, which was registered after due deliberations, consultations and confabulations.

20. It was argued that the entire prosecution story initially proceeded on the footing that the deceased had committed suicide by burning herself, and that is why, the FIR was initially registered under Sections 498-A/304-B IPC. It was contended that the subsequent conversion of the case to one under Section 302 IPC was founded upon the disclosure statement of the accused, which is inadmissible in evidence.



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21. It was further submitted that prosecution has failed to establish any direct or circumstantial evidence connecting the appellant with the alleged homicidal death of the deceased. The learned counsel argued that there was no eye witness to the occurrence. Having not found any evidence against the accused, police planted the minor child of the accused as a witness after four months of the incident while the child was living with the grandparents and relatives who were inimical to the accused and therefore, the child was susceptible to the tutoring and influence by them. There is no explanation as to why the statement of the child witness was not recorded immediately if he was an eye witness to the occurrence. It was further argued that the statement of the child witness was recorded before the court after about 19 months of the incident, rendering his testimony unsafe for reliance. The learned counsel also questioned the manner in which the statement of the child witness was recorded, contending that there was no proper translation from Malyalam to Hindi and no independent interpreter was associated during the process. According to the learned counsel, the prosecution failed to establish that the child witness retained an independent recollection of events after such prolonged delay.

22. It was further submitted that the learned Trial Court did not appreciate that there was no motive for the accused to commit the crime as he was well employed with Indian Army and was drawing a good salary. It was further submitted that the allegations of dowry related harassment are general and vague in nature, without any specific details, and the witnesses examined to prove the same are related and interested witnesses, and therefore, their testimonies



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cannot be relied upon to convict the accused.

23. It was further argued that at the time of the alleged commission of offence, the accused was present at his duty and was not present even at the spot. His presence at the spot has not been proved by any of the prosecution witnesses except the child witness, whose testimony is not reliable.

24. It was further argued that DW-1 has proved the recovery of suicide note dated 23rd April, 1997, left by the deceased, which was recovered from the place of occurrence. The handwriting on the suicide note has been identified by the father of the deceased as that of the deceased. It was argued that the Trial Court erred in arriving at the conclusion by expecting the defence to prove its case beyond reasonable doubt, whereas, the defence of the accused has to be tested on the anvil of it being reasonable and probable.

25. The learned counsel for the appellant has also assailed the medical evidence by arguing that homicidal death was not proved beyond reasonable doubt. Reliance was placed on the testimony of PW-13 Dr. Shambhuji and the delayed final medical opinion, which was furnished nearly 11 months after the post-mortem. It was submitted that despite the doctor's experience, no conclusive opinion was initially given even as there were no signs of poisoning in the post-mortem examination. It was argued that the post-mortem findings, including normal condition of heart and lungs, contradicted the prosecution theory of smothering and that the final opinion appeared influenced by the investigating agency. It was further contended that prosecution has failed to conclusively establish the



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precise cause of death.

26. The learned counsel further submitted that prosecution failed to establish the ingredients of Sections 498-A IPC. It was submitted that the allegations regarding the dowry demands and cruelty were vague and without specific details. No complaint had ever been lodged by the deceased and no independent neighbour or witness was examined to corroborate the allegations made by the family members of the deceased. It was further argued that once the mother of the appellant had been discharged for the lack of sufficient evidence, the same evidence could not selectively be relied upon against the appellant alone.

27. It was further argued that the prosecution failed to establish motive for the alleged offence. It was argued that the alleged dispute relating to land and property standing in the name of the deceased, was false and unsupported by evidence and the appellant had never sought transfer of the property in his name. It was thus argued that prosecution has failed to establish the guilt of accused beyond reasonable doubt, and therefore, he is liable to be acquitted.

Submissions on behalf of State

28. *Per contra*, the learned Additional Public Prosecutor [APP] for the State submitted that learned Trial Court has given detailed and well-reasoned findings and convicted the appellant after a fair trial and upon proper appreciation of evidence.

29. It was submitted that the evidence on record proves that the deceased was subjected to continuous cruelty and harassment on account of dowry demands soon before her death. The learned APP



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argued that the testimonies of PW-7 V. Venugopalan Nair and PW-12 B. Sumaraj Kumar consistently establish that the appellant had been demanding money and exerting pressure upon the deceased in relation to financial and property matters. It is argued that the minor discrepancies in the statements of witnesses are natural and did not depart from the core prosecution case.

30. The learned APP further submitted that the conduct of the appellant and the surrounding circumstances clearly established that the death of the deceased was neither accidental nor suicidal in nature. It was argued that the post-mortem report and the testimony of PW-13 Dr. Shambhuji demonstrate that the burn injuries were post-mortem and that the deceased had died prior to when she was burnt. It was contended that the medical evidence substantially corroborated the prosecution narrative that the appellant had caused the homicidal death of the deceased and attempted to destroy evidence by burning the body.

31. The learned APP submitted that merely because the final medical opinion was furnished after receipt of viscera examination report, no adverse inference could be drawn against the prosecution. It was argued that keeping the final opinion pending till the receipt of viscera report is a normal course adopted by medical experts to rule out any other cause of death including poisoning.

32. With regard to the testimony of the child witness Master Unikuttan (PW-4), it was contended that his testimony is natural, trustworthy and fully reliable. The learned APP submitted that the child witness had no reason to falsely implicate his own father and his



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statement inspired confidence on material particulars. It was argued that the delay in recording his statement stood sufficiently explained in the facts and circumstances of the case, particularly having regard to the trauma suffered by the child after witnessing the incident. The learned APP thus submitted that mere delay in recording the statement of a child witness would not by itself render his testimony unreliable.

33. The learned APP further argued that the objections regarding translation or interpretation at the time of recording of a child's testimony are wholly inconsequential as the substance of the statement remained consistent throughout. It was argued that the testimony of the child witness was corroborated by surrounding circumstances and medical evidence, thereby, lending assurance to the prosecution case.

34. The learned APP further contended that the delay in registration of FIR or conduct of post-mortem examination have been adequately explained and did not cast any doubt upon the prosecution case. It was submitted that in cases involving unnatural death of a married woman, some delay in initiating proceedings or collecting evidence is not uncommon, particularly when the family members are the residents outside Delhi and are in a state of shock and grief. It was argued that no material contradiction or embellishment attributable to such delay had been demonstrated by the defence.

35. It was also submitted that the prosecution has sufficiently established the motive for commission of offence. It was argued that the evidence on record clearly proved strained matrimonial relations arising out of persistent demands for money and property. Notwithstanding the same, the absence of motive cannot outweigh



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direct and reliable evidence, otherwise establishing guilt.

36. It was further submitted that the alleged suicide note has not been proved in accordance with law and no material was placed on record to substantiate the defence allegation regarding suppression of evidence. It was argued that bald assertions made by the defence without any supporting material could not discredit an otherwise cogent prosecution case.

37. The learned APP lastly submitted that the defence taken by the appellant under Section 313 Cr. PC was vague, evasive and unsupported by any evidence. It was argued that the appellant failed to furnish any plausible explanation regarding the circumstances in which the deceased suffered homicidal death within matrimonial home. It was thus argued that the evidence led by the prosecution clearly established the guilt of the appellant beyond reasonable doubt, and therefore, no interference with the judgment of conviction and order on sentence was warranted.

Reasoning and Analysis

38. We have considered the rival submissions. There is no dispute that deceased had died an unnatural death. On receipt of DD No. 22-A (Ex. PW-19/A), SI Dinesh Kumar (PW-19) along with Constable Shamsher Singh (PW-9) went at the spot at 140/2, Shekhawat Lane, Delhi Cantt., where they found wife of the accused lying dead in a burnt condition. Her mouth was lying open with tongue protruding upto the teeth. The hands of the deceased were on the upper side of the body and in front of the chest. There was blood under the head of the deceased. Some kerosene oil was also lying there.



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39. Dr. Shambhuji (PW-13), who conducted the post-mortem of the deceased, also confirmed that the mouth of the victim was lying open and the tongue was protruding. There was bleeding from the nose. There were superficial deep burns over the face, neck, chest, abdomen, both upper limbs and lower limbs in front and upper part of left thigh, posteriorly back and gluteal region. According to him, there were areas of blackening of skin. The skin was burnt out at most places. There was absence of line of redness. No Erythema, no areas blister formation, charring present at places and all the hairs were signed. There was heat laceration on the left shoulder due to burn. On internal examination, the neck structure was found intact. The scalp, skull and brain were found normal. The liver and spleen were also found normal. Both the kidneys were however found congested. As per the opinion of the doctor, the death was not by burning, which was post-mortem in nature. However, the viscera was preserved for the ascertaining the presence of poison. Upon receipt of FSL result (Ex. PX), PW-13 gave the final opinion (Ex. PW-13/B) on 19th March, 1998, confirming that the cause of death was asphyxia caused by smothering and that the burn injuries were post-mortem burns.

40. PW-13 was extensively cross examined by the defence. In such cross examination, the doctor admitted that he found the lungs to be normal. However, he clarified that it is not necessary that in case of smothering, the lungs are always congested. The same also finds corroboration from the medical text. As per Modi's Textbook of Medical Jurisprudence & Toxicology, in case of death by asphyxia, the lungs are usually markedly congested, showing haemorrhagic



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patches and petechiae and exuding dark fluid blood on section. But further clarifies that the lungs may be found quite normal if the death occurs rapidly. The learned counsel for the appellant has failed to point out anything from the extensive cross examination which may lead to inference other than the one as opined by the doctor.

41. The prosecution case initially proceeded on the premise that the deceased had committed suicide, as is evident from DD No. 22A. Thereafter, on the basis of the statement of PW-7 V. Venugopalan Nair, the FIR came to be registered under Sections 498-A/304-B IPC. It was only subsequently during the course of investigation that the case was converted into one under Section 302 IPC. This transition in the prosecution case assumes significance while evaluating the evidence on record and the degree of certainty with which the prosecution has sought to establish a charge of murder.

42. The entire case of the prosecution hinges on the evidence of the child witness. PW-4 Siri Raj, son of the deceased and the appellant R. Santosh Kumar. He was aged about three years at the time of incident. Before we proceed to undertake the analysis of the testimony of PW-4, it is necessary to understand how the testimony of the child witness should be looked into and applicable.

43. The Indian Evidence Act, 1872 (in short, the “**Evidence Act**”) does not prescribe any particular age as a determinative factor to treat a witness to be a competent one. On the contrary, Section 118 of the Evidence Act envisages that all persons shall be competent to testify, unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to these



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questions, because of tender years, extreme old age, disease- whether of mind, or any other cause of the same kind. A child of tender age can be allowed to testify if he has intellectual capacity to understand questions and give rational answers thereto.

44. In *Dattu Ramrao Sakhare v. State of Maharashtra* reported in (1997) 5 SCC 341, the Hon'ble Supreme Court held that as long as a child witness is found to be competent to depose i.e., capable of understanding the questions put to it and able to give rational answers, the testimony of such witness can be considered as evidence in terms of Section 118 of the Evidence Act, irrespective of their tender age or absence of any oath. The only additional factor to be considered is that the witness must be found to be reliable, exhibiting the demeanour of any other competent witness, with no likelihood of having been tutored. It further clarified that there is no requirement or condition that the evidence of a child witness must be corroborated before it can be considered, and rather the insistence of any corroboration is only a rule of prudence that would depend upon the peculiar facts and circumstances of each case.

45. Similarly in *Pradeep v. State of Haryana* reported in 2023 SCC OnLine SC 777, the Hon'ble Supreme Court emphasized on the importance of preliminary examination of a child witness. It held that although oath cannot be administered to a child witness under 12-years of age yet, as per Section 118 of the Evidence Act it is the duty of a Trial Judge to conduct a preliminary examination before recording the evidence of the child witness to ascertain if the child is able to understand the questions put to him and that he is able to give



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rational answers to the questions put to him. It held that the Trial Judge must record its opinion and satisfaction that the child witness understands the duty of speaking the truth and state why he is of the opinion that the child understands the duty of speaking the truth. It further held that the questions put to the child in the preliminary examination must also be recorded so that the appellate court can go into the correctness of the opinion of the Trial Court. The Hon'ble Court further held that corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. A child witness of tender age is easily susceptible to tutoring. However, that by itself is no ground to reject the evidence of the child witness. The Court must make a careful scrutiny of the evidence of the child witness and apply its mind to the question whether there is possibility of a child witness being tutored.

46. In *Ratansinh Dalsukhbhai Nayak v. State of Gujarat* reported in (2004) 1 SCC 64, the Hon'ble Supreme Court explained that although child witnesses are considered as dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded, yet it is an accepted norm that if after careful scrutiny their testimony is found to inspire confidence and truthful, then there is no obstacle in accepting the evidence of such child witness.

47. In *Panchhi v. State of U.P.* reported in (1998) 7 SCC 177, the Hon'ble Supreme Court held that the evidence of a child witness should not be outrightly rejected but the evidence must be evaluated carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and an easy prey to



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tutoring.

48. In *Arbind Singh v. State of Bihar* reported in (1995) Supp (4) SCC 416, the Hon'ble Supreme Court found the testimony of the child witness therein to be tutored due to the various inconsistencies and contradiction in her statements as regards the cause of death of the deceased therein, and due to the fact that the child witness was residing with her maternal uncle immediately after the incident occurred. This Court further held that implicit faith and reliance cannot be placed on a testimony that betrays traces of tutoring and the court must look for corroboration before relying on the same.

49. Based on the above exposition of law, it is evident that the evidence of a child witness stands on the same footing as any other witness as long as the child is found to be competent to testify. However, while assessing the testimony of the child witness, the Court has to find out as to whether such witness is reliable due to susceptibility of the children by falling prey to tutoring. While appreciating the testimony of the child witness, the Court has to assess whether the evidence of such witness is voluntary expression and not borne out of the influence of others and whether the testimony inspires confidence. The insistence of corroboration is only a measure of caution and prudence that the Court may exercise if feel necessary in the particular facts and circumstances of the case.

50. Coming back to the present case, the most crucial piece of evidence relied upon is the testimony of PW-4 Master Siri Raj. According to the prosecution, he was the sole eye witness of the occurrence who stated that on the fateful day, his father had beaten his



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mother, pressed her mouth and neck and thereafter poured kerosene oil on her and set her ablaze.

51. In his statement recorded by the police under Section 161 Cr. PC, PW-4 stated that his father beat his mother, pressed her mouth and neck and then poured kerosene oil and set her ablaze, while in his testimony before the Court, he only stated that his father kicked and beat his mother and poured kerosene oil and burnt her. He does not depose about pressing her mouth and neck. As already discussed, the cause of death as per the post-mortem report is asphyxia due to smothering, but if the testimony of the child witness is accepted, the cause of death was burn injuries after pouring kerosene oil. The testimony of PW-4 is not only at variance from his previous statement under Section 161 Cr. PC but also not in consonance with medical opinion.

52. The incident had taken place on 23rd April, 1997. However, the statement of PW-4 was recorded by the Investigating Officer on 18th August, 1997 i.e. nearly after four months, while the child was residing with his paternal grand parents in Kerala. His statement was recorded in Court after more than 1 ½ years. No explanation has been furnished as to why the only alleged witness was not examined at the earliest opportunity. Although, the police was well aware that he was the vital witness to the entire case and could guide the investigation into the right direction. We are also conscious that the testimony of PW-4 cannot be discarded solely on the ground of delay alone, inasmuch as, in *Ranbir & Ors. v. State of Punjab*, reported as (1973) 2 SCC 444, the Hon'ble Supreme Court observed that the factum of



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delayed examination of a witness ought to be specifically put to the IO so as to enable him to explain the reasons thereof. It further held that delay in examining a witness during investigation would be material only if it is indicative and suggestive of some unfair practice by the investigating agency for the purpose of introducing a got-up witness to falsely support the prosecution case. Similarly, in the case of *State of U.P. v. Satish* reported in (2005) 3 SCC 114, the Hon'ble Supreme Court held that before the delay in examination of any particular witness can be taken into consideration to impeach their credibility, the IO must be first asked by the accused to explain the delay by putting a question in this regard. The relevant observation reads as under:-

“20. It is to be noted that the explanation when offered by the IO on being questioned on the aspect of delayed examination by the accused has to be tested by the court on the touchstone of credibility. If the explanation is plausible then no adverse inference can be drawn. On the other hand, if the explanation is found to be implausible, certainly the court can consider it to be one of the factors to affect credibility of the witnesses who were examined belatedly. It may not have any effect on the credibility of the prosecution's evidence tendered by the other witnesses.”

53. In his examination in chief, PW-19 tried to give explanation for not recording the statement of the child witness, inasmuch as, he stated that he had made effort on 23rd April, 1997 to make enquiries about the occurrence from the son of the deceased, but he was in a state of shock and was continuously weeping. According to him, the child was not able to understand what he said and the persons present



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there told him not to make enquiry from the child because of his condition and therefore feeling that it would not be proper to do so, he did not make any further enquiry from the child on 23rd April, 1997. One may understand that the child was in a state of shock and therefore his statement could not be recorded on 23rd April, 1997. In his cross examination, PW-4 stated that he left Delhi so many days after the death of his mother. In cross examination, PW-10, Vishwanathan Nair, father of the deceased, also stated that after the death of Ganga, her son came to stay with them. PW-7 Venugopalan Nair, brother of the deceased, clarified in his cross examination that he returned from Delhi on 27th April, 1997. It is thus evident from the testimonies of the witnesses that PW-4 continued to be in Delhi from the date of incident, that is, from 23rd April, 1997 till 27th April, 1997. PW-19 did not furnish any explanation as to why the statement of PW-4 was not recorded during the four days after 23rd, April, 1997. In further cross examination, PW-19 stated that he had not moved any application before the Magistrate or the SDM for recording of the statement of child and also made no effort to record the statement of the child after 26th April, 1997 till 03rd June, 1997. No explanation was rendered by him for not recording the statement of the child witness for so long. Admittedly, the statement of PW-4 Siri Raj was recorded under Section 161 Cr. PC as late as on 19th August, 1997. Thus, there was a gap of about four month between the date of incident and the date on which the statement of child was recorded.

54. Admittedly, by the time, the statement of PW-4 was recorded by the police under Section 161 Cr. PC, he had been residing with his



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maternal family for the last about four months and continued to reside with them for about one and a half year before recording of his statement before the Court. The prolonged delay in recording the statement of PW-4 assumes greater significance because the child had admittedly been residing with his maternal relatives, who had from the very beginning, suspected the appellant to be responsible for the death of the deceased. In such circumstances, the possibility of tutoring or influencing cannot be completely ruled out. While the Court does not presume tutoring merely on the ground of delay, the surrounding circumstances certainly require the evidence of the child witness to be appreciated with caution.

55. There is another glaring contradiction in the prosecution case, inasmuch as, contrary to the prosecution version, PW-9 Constable Shamsheer Singh stated in cross examination that SI Dinesh Kumar had interrogated the child of the deceased and whatever the child told, was recorded by SI Dinesh Kumar. If PW-9 is to be believed, the Investigating Officer is guilty of holding back such a statement and an adverse inference can be drawn that such statement was against the interest of prosecution.

56. Another reason for doubt is the manner in which the statement of the child witness came to be recorded. The child was a Malayalam speaking witness. The record does not disclose the association of any independent interpreter or translator. The prosecution has not satisfactorily explained the process through which his statement was translated and recorded in different languages. In a case where the testimony of such witness forms the backbone of the prosecution case,



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these deficiencies assume importance.

57. The testimony of PW-4 does not find any corroboration from any independent source. There is no scientific evidence, forensic material, recovery or independent witness, which corroborates the averments made by the child witness against the appellant, and therefore, it would be unsafe to sustain conviction for the offence of murder solely on the basis of such testimony.

58. It is the case of the prosecution that accused left his unit at 1.30 pm for taking lunch and returned back at 3.00 pm, and thus, at the relevant time, he was present at his house. In order to prove the same, prosecution examined PW-11 Shivaji Biradar. As per prosecution narrative, on 23rd April, 1997, at about 1.30 pm, PW-11 left from his regiment at 1.30 pm on the scooter driven by accused R. Santosh and when reached the house of accused, he saw that his wife was standing in the balcony. However, when examined in Court, he turned hostile. He was cross examined by the learned APP. In such cross examination, he flatly denied having told the police that on 23rd April, 1997 at about 1.30 pm, he came to his house for lunch on the scooter, driven by the accused or that his wife Ganga was waiting for him in the balcony and on seeing Santosh, she went inside.

59. Similarly, PW-15 Havaldar K. Chander Shekharan was examined with a view to prove that he had seen the accused going towards the unit from his house, but this witness also turned hostile and did not support the prosecution version, inasmuch as, in cross examination conducted by the learned APP, he denied having told the police in his statement that when he returned from his unit at 2.45 pm



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and came out in the balcony after lunch, he saw the accused going towards his unit. He further denied the suggestion that when accused met him in the unit, on enquiry, he told that he had gone to his house at 1.30 pm and came back to the unit on his scooter at 3.00 pm. Thus, the testimonies of PW-11 and PW-15 are of no help to the prosecution in establishing the presence of accused at his house at the time of incident. PW-2 Subedar K. Babu, who was posted as Company Subedar, was also declared hostile. Even though, in cross examination, he stated that accused had left the unit at 1.30 pm for taking lunch and returned back between 2.50 – 3.00 pm, but had not deposed about the same in his examination in chief. Moreover, he also does not prove the presence of the accused at the place of incident. Thus, none of the witnesses examined by the prosecution had seen the accused at the spot, and hence, the presence of accused at the spot is not proved.

60. Furthermore, the defence sought to contend that since the room was found locked from inside, prosecution version become inherently improbable. PW-11 Shivaji Biradar deposed that on being informed by the mother in law of the deceased, he rushed to the spot and found the child (PW-4) standing in the balcony and crying and smoke erupting from the house. PW-11 then tried to open the door but it was closed. So he climbed through the balcony in order to rescue the child and then passed down child to the public gathered below and then opened the door from inside. The learned counsel for the appellant emphasised that the appellant had a plaster cast on his hand on the day of occurrence and therefore was physically incapable of committing



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the act alleged by the prosecution. Such fact is also corroborated by the testimony of PW-4, PW-11 and PW-15, who confirmed that appellant had a plaster cast on one of his hands. Since the hand of the appellant was plastered, it is almost difficult if not impossible that he could have smothered the deceased and then escaped from the balcony. Moreover, no one had seen the appellant enter and exit his house on the fateful day.

61. We are conscious that if the death of a woman is caused by any burns or bodily injury or otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of her husband, in connection with any demand for dowry, such death shall be called “dowry death” and such husband or relative shall be deemed to have caused her death. Admittedly, the deceased had died within seven years of her marriage with the appellant. It is also an admitted fact that the death occurred otherwise than under normal circumstances. In order to prove that she was subjected to harassment and cruelty on account of dowry demand, prosecution has placed reliance upon the testimony of PW-7 V. Venugopalan Nair, PW-10 Vishwanathan Nair and PW-12 R. Sumaraj Kumar. The testimonies of PW-7 and PW-12 essentially contain averments that the appellant demanded money from the parental family of the deceased and exerted pressure upon her to sell off the property standing in her name.

62. However, upon careful examination of such testimonies, we find that the allegations are largely general in nature. No specific



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incident of cruelty, demand or harassment has been proved through independent evidence. No complaint was lodged by the deceased during her lifetime regarding the harassment faced by her. No neighbour, friend, colleague or other independent witness has been examined to corroborate the allegations of persistent cruelty.

63. In cross-examination, PW-7 stated that the appellant never asked him or his father for sending money/dowry. He also stated that even though Ganga used to write letters to her sister, she never told him about any complaints regarding the appellant. In fact, in his statement, PW-10 Vishwanathan Nair, father of the deceased, stated that there were no real problems between Ganga and her husband, but sometimes, small problems were there. According to him, Ganga was upset from the accused, when he sold the second instalment of gold. Even though, he stated that accused asked him to pay Rs.1000/- every month because of meagre salary and shortage of funds, such demand of money can at best be regarded as “financial help” and not a “demand for dowry”. The testimony of PW-10 proves that there were fights and quarrels between the accused and Ganga and accused had beaten Ganga, but such allegation *per se* do not prove that the harassment was on account of demand of any dowry.

64. According to V. Venugopalan Nair (PW-7), when his brother in law R. Sumaraj Kumar (PW-12) went to Bangalore, Ganga had told them that accused had beaten her with his service belt and demanded Rs. 500/- every month from Ganga’s house. Such part of his testimony is based on hearsay evidence and is therefore inadmissible in evidence. PW-7 further deposed that when his elder sister and brother



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in law had gone to the place of accused for inviting him to marriage, at that time, the mother of accused said that since there were lot of expenses, the house given to Ganga by them, was to be sold, as no one was living there. It is evident that PW-7 was not present at that time. Moreover, such demand of selling the property standing in the name of Ganga, is not attributed to the accused. Nowhere, in his testimony, PW-7 deposed that Ganga had complained him about harassment at the hands of accused on account of dowry demand.

65. PW-12 R. Sumaraj Kumar, brother in law of deceased, deposed that soon after the marriage, Ganga complained that accused Santosh used to physically abuse her and demanded dowry. According to him, accused used to say that they cannot live with his salary alone and should get Rs. 500/- per month from Ganga's parents, but Ganga did not agree for the same. He further deposed that many times, Santosh and his mother told Ganga that land and building be sold, but Ganga was against the same. However, his testimony is silent about the date, month or year of such demand and physical abuse. PW-12 further deposed that sometime in January 1995, when he visited Ganga and the accused in Bangalore, Ganga had told him that accused Santosh used to beat her often and also told that once she was beaten, which caused bleeding from her nose and mouth. He further deposed that she had also told that once she was beaten with service belt and she said that she could not tolerate this and that if anything happened to her, it should not be treated as a suicide and asked him tell this to his parents. So far as this part of his testimony is concerned, although there are allegations of physical abuse, there is no averment that such physical



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abuse was on account of any dowry demand. Moreover, we are of the view that any discussion regarding the acquisition or sale of any property are normal matters discussed between the family members and cannot be given the colour of dowry demand and cannot operate as a motive for commission of murder.

66. Thus, it is evident from the testimonies of the related witnesses of the deceased that evidence regarding cruelty and harassment on account of dowry demand is not of sterling quality to hold the accused guilty under Section 498-A IPC. Once we hold that prosecution has failed to prove that the deceased was harassed on account of demand of dowry, presumption of dowry death under Section 304-B IPC is also not available.

67. It is further noteworthy that substantially similar allegations had also been levelled against the mother of the appellant. However, the learned Trial Court found the evidence insufficient even for framing a charge and discharged her from the proceedings. Though the discharge of the co-accused may not by itself exonerate the appellant, it nevertheless demonstrates the inherently weak nature of allegations concerning dowry harassment.

68. In *Kali Ram Vs. State of Himachal Pradesh, AIR 1973 SC 2773*, the Supreme Court observed that if two views are reasonably possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, then the view which is favourable to the accused should be adopted. Similarly, in *Sujit Biswas Vs. State of Assam, (2013) 12 SCC 406*, the Supreme Court held that suspicion, however strong, cannot take the place of proof and



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the prosecution must establish its case beyond reasonable doubt.

69. Having considered the facts and circumstances of the case, in the light of evidence adduced on record and upon applying the aforesaid principles, we are of the considered view that prosecution has failed to establish beyond reasonable doubt that it was the appellant who committed the alleged offence. The testimony of the sole eye witness suffers from substantial infirmities arising from delay and lack of corroboration. The allegations of cruelty on account of dowry demand are vague and unsubstantiated. No independent scientific or forensic evidence directly connects the appellant with the crime.

70. Viewed cumulatively, the circumstances relied upon by the prosecution create suspicion regarding the involvement of the appellant. However, it is a cardinal principle of criminal jurisprudence that suspicion, howsoever strong, cannot take the place of proof. The distance between "may be true" and "must be true" has not been traversed by the prosecution in the present case.

71. Consequently, we are of the considered opinion that the prosecution has failed to prove beyond reasonable doubt that the appellant R. Santosh committed the murder of the deceased or subjected her to cruelty punishable under Section 498-A IPC. The appellant is, therefore, entitled to the benefit of doubt.

72. Accordingly, the appeal deserves to be allowed. The judgment of conviction dated 06.04.2002 and the order on sentence dated 30.04.2002 are hereby set aside. The appellant R. Santosh is acquitted of all the charges framed against him. His bail bonds shall stand



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discharged in accordance with law.

73. A copy of this judgment be sent to the concerned Jail Superintendent and the learned Trial Court for information and compliance.

RAVINDER DUDEJA, J

NAVIN CHAWLA

JUNE 18, 2026/AK