

**IN THE COURT OF GAURAV GUPTA  
SPECIAL JUDGE-NDPS/ASJ (SOUTH)  
SAKET COURTS, NEW DELHI**

**SC No. 467/21  
CNR No. DLST01-010276-2021**

**FIR No. : 247/21  
P.S. : MAIDAN GARHI  
U/s : 498A/304B/34 IPC**

**STATE**

**Vs.**

**1) MAHESH  
S/o Sh. Prem Nath**

**2) PREM NATH  
S/o Late Sh. Ram Phool Tanwar**

**3) BIMLA DEVI  
W/o Sh. Prem Nath**

All residents of  
H. No. 37A, Rajpur Khurd,  
Near Ram Chander Market, Gali No.1,  
Chattarpur Extension, New Delhi. ....Accused persons

**Date of assignment : 23.12.2021  
Arguments concluded on: 13.05.2024  
Judgment announced on : 31.05.2024**

**J U D G M E N T**

The accused persons have been put up for trial for the offence under sections 498-A/ 304-B/ 34 of IPC with the allegations that they had harassed deceased Nisha to meet

unlawful demand of dowry which resulted into her death.

### **BRIEF FACTS OF THE CASE**

1.0 As per the prosecution story, on 22.09.2021, GD No. 50-A was received from PS Maidan Garhi that wife of the accused Mahesh namely Nisha had committed suicide by hanging herself from the ceiling fan. ASI Rajesh along with Wct. Meenu reached the spot where room was found locked from inside. The door was broken with the help of the staff of the Delhi Fire Brigage, who were already present there and deceased Nisha was found hanging from the ceiling fan with the red coloured *chunni* tied around her neck. Crime Team inspected the scene of crime and photography was conducted. No suicide note was found there. Deceased was brought down with the help of Ct. Meenu and was sent to the AIIMS Hospital where the doctor had declared Ms. Nisha as brought dead vide MLC no. 8031/21. Post mortem was conducted vide PM Report no. 1421/21 and dead body was handed over to complainant Smt. Phoola Devi, mother of deceased. On the basis of allegations levelled by the mother of deceased and on the basis of initial enquiry, it was revealed that the accused persons had harassed Ms. Nisha to meet unlawful demand of dowry which resulted into her death. ASI Rajesh recorded the statement of brother of deceased in presence of Sh. Yogender Singh, Tehsildar. FIR was registered and the matter was investigated. After completion of the investigation, the chargesheet was filed in the Court against the accused persons for the offences u/s 498-A, 304-B and 34 IPC.

## CHARGE

2.0 Detailed arguments on charge were heard and vide order dated 05.04.2022, the accused persons namely, Prem Nath, Mahesh and Bimla Devi were charged for the offence under Sections 498-A, 304-B and 34 IPC. Accused persons pleaded not guilty to the charge and claimed trial.

## PROSECUTION EVIDENCE

3.0 The prosecution examined the following witnesses in support of its case :-

3.1 **PW-1 is Sh. Rajpal, brother of deceased Nisha.** He deposed about the demands of dowry by the accused persons and consequent harassment and cruelty meted to his sister by the accused persons. He further deposed that accused persons had told that they were not given cash in lieu of the four wheeler as promised by him during marriage. He further deposed that his deceased sister was being tortured and treated as a servant as he had not given the demanded money to accused Prem Nath, Mahesh and Bimla Devi. He further deposed that on 29.09.2021, he received a call from accused Prem Nath who informed that his sister had committed suicide by hanging herself. He further deposed that his statement Ex.PW1/A was recorded by SDM. He further deposed that he reached the hospital where dead body was identified by him vide memo Ex.PW1/B and body was handed over to him vide memo Ex.PW1/C. This witness also deposed that the marriage card and photographs were handed over by him to the police vide seizure memo Ex.PW1/D.

**3.2 PW2 is Smt. Phoola Devi, mother of deceased.** She deposed on similar lines as that of PW1. She deposed that she had given articles as per the list vide memo Ex.PW2/A. She further deposed that statement Ex.PW2/B was recorded by Executive Magistrate.

**3.3 PW3 is Sh. Raj Bahadur, younger brother of deceased Nisha.** He deposed that after 05 days of the marriage of deceased Nisha, he along with his elder brother Raj Pal and uncle (fufa) had gone to the matrimonial house of his sister where accused Prem Nath, Mahesh and Bimla devi told him that Rajpal had promised to pay them money in the marriage to which he replied he did not know anything and he would ask his elder brother regarding the same. He further deposed that his deceased sister used to share about her routine activities and he used to have normal conversation. Upon knowing the death of his sister, he along with his mother and relatives Amarpal and Surender had reached Delhi where his statement Ex.PW3/A was recorded by the Executive Magistrate.

This witness was declared hostile and was cross examined by Ld. Addl. PP, however, he did not deter from his chief examination and stood firm on the same.

**3.4 PW4 is Sh. Kamlesh Kumar Pal, cousin of deceased Nisha.** He deposed that on the day of marriage, accused Prem Nath had told Rajpal as to why he was not giving the agreed amount of Rs. 4-5 Lakhs for purchase of a car. He further deposed that when Nisha had come to her paternal house, he had gone to stay there for a few days. He further deposed that

deceased Nisha told me that her inlaws did not allow her to keep a mobile phone. He further deposed that before the death of Nisha, Rajpal had called him telling him that all the accused persons were torturing Nisha over household work and demand of money.

**3.5 PW5 is Sh. Govind Singh, tenant of accused Premnath.** He deposed that he was not aware of the kind of relations Nisha had with her inlaws. He further deposed that he has no idea as to why Nisha had committed suicide. PW5 further deposed that Mahesh and Nisha never had any quarrel in his presence. Witness also identified red coloured chunni which was found tied around the neck of deceased Nisha as **Ex.P1**. He also identified an unselaed brown coloured box which was present in the room of Nisha as **Ex.P2**.

**3.6 PW6 is Inspector Chandra Prakash.** He deposed that on 25.09.2021, the investigation of this case was marked to him and documents were handed over to him by ASI Rajesh Kumar. He further deposed that he made endorsement on the statement of Smt. Phoola Devi recorded by SDM and rukka Ex.PW6/A was prepared by him. This witness prepared the site plan Ex. PW6/B of the place where the deceased was found hanging. The witness arrested the accused Mahesh and Prem vide arrest memos Ex.P9 and Ex.P10 and conducted personal search of both the accused vide memos Ex.P11 and ExP12. He further deposed that he had seized sewing machine and plastic cover vide memo **Ex.PW6/C** from the house of deceased. He further deposed that he had collected postmortem report and obtained

subsequent opinion regarding chunni vide application **Ex.PW6/D**. This witness also collected CAF and CDRs of accused Mahesh, Premnath and Rita. After completion of investigation, this witness filed the charge-sheet **Ex.PW6/E** against accused Premnath and Mahesh and later the supplementary charge-sheets **Ex.PW6/F** against Bimla Devi and Rita was filed in the court.

**3.7 PW7 Sh.Yoginder Singh, Section Officer** is the then Executive Magistrate. This witness identified his signature on the statement of Phoola Devi, Rajpal, Raj Bahadur which was recorded by him. He further deposed that he had issued a letter to CMO for conducting the postmortem of deceased Nisha **Ex. PW7/A**.

**3.8 PW8 is Sh. Mahak Singh, Sub Officer, Vasant Kunj, Fire Station.** He deposed that he had received an information from control room that one lady was locked in a room and needed to be rescued. This witness along with his team reached the spot where he along with his staff went to the third floor and saw that the room was locked from inside and CATs staff was already present there. This witness opened the door with the help of his staff by breaking the latch.

**3.9 PW9 is Sh. Parveen Kumar, Alternate Nodal Officer, Reliance Jio.** He deposed that upon request of Inspector Chandra Prakash, he had provided CDR and CAF of mobile no. 7827907607 **Ex.PW9/A**.

**3.10 PW10 is SI Ajay.** He deposed that on 22.09.2021, on receipt of message through wireless, he alongwith proficient ASI Sandeep Rawat and photographer Baldan Singh reached the place of incident. He further deposed that CAT ambulance was already present there. He further deposed that ASI Rajesh and other police officers were also present there and with the help of fire brigade the door was broken and on entering the door, they saw dead body of a lady hanging from ceiling fan with the help of red coloured chunni. The photographer had clicked several photographs **Ex.P4 (colly)** of the spot. The witness had removed chunni from the neck of deceased and the said chunni was handed over to IO. He further deposed that he had prepared his report Ex.PW10/A and handed over to IO.

**3.11 PW11 is W/CT Meenu Kumari.** She deposed that on 22.09.2021, on receipt of GD No. 50A, she alongwith ASI Rajesh reached the place of incident, where staff of fire brigade or crime team and CAT ambulance were already present and room was found to be bolted from inside. She further deposed that staff of fire brigade had broke open the door and found deceased Nisha hanging from the ceiling fan with a red coloured chunni. She further deposed that she helped the body of deceased Nisha to be brought down. Thereafter, the dead body was sent to AIIMS hospital under the supervision of this witness as well as Ct. Mukesh wherein MLC was prepared and body was preserved.

**3.12 PW12 is ASI Rajesh Kumar.** He deposed that on 22.09.2021, on receipt of GD No. 50A, he alongwith Wct.

Meenu and Ct. Mahesh reached the place of incident, where staff of fire brigade or crime team and CAT ambulance were already found present there and room was bolted from inside and staff of fire brigade had broke open the door where deceased Nisha was found hanging from the ceiling fan with a red coloured chunni. He further deposed Ct. Meenu had untied the piece of chunni from the neck of Nisha and piece of chunni and broken bolt was seized by me vide memo **Ex.PW12/A**. This witness sent the dead body to AIIMS under the supervision of Wct. Meenu and Ct. Mahesh. This witness had made request **Ex.PW12/B** for preserving the dead body in mortuary. He further deposed that he had informed SDM about the incident. The witness had also informed about the incident to her family members and recorded statement of accused Mahesh Pal, Prem Nath and neighbour Rahul and other neighbours. This witness had produced family members Phoola Devi (mother), Rajpal(brother) and Raj Bahadur(younger brother) before Tehsildar Sh. Yogender Singh who recorded their statements and handed over the same to him along with authority letter for getting conducted postmortem of deceased Nisha and identification of her dead body. The witness got identified the dead body of Nisha from Rajpal and Rajbahadur and recorded the statement of Rajbahadur **Ex.PW12/C** and Rajpal. He further deposed that he had collected ID proofs **Ex.PW12/D(colly)** of mother and brothers of deceased.

**3.13** No other witness was examined by the prosecution and Prosecution Evidence was closed.

**STATEMENT OF ACCUSED**

**4.0** All the incriminating circumstances appearing in the evidence were explained to the accused persons when they were examined under Section 313 Cr.P.C. The accused persons denied all the allegations and gave only formal answers saying that they do not know anything about the evidence led against them and stated that they are innocent and have been falsely implicated in this case. Accused Mahesh stated that his wife was given a congenial atmosphere at home but she remained under tremendous stress.

**ARGUMENTS.**

**5.0** It was argued by Ld. Addl. PP that there are clear allegations of dowry demand and harassment on account of dowry. It was argued that the death of the victim had occurred under suspicious circumstances within seven years of marriage and the onus was upon the accused husband to explain the circumstances under which the victim died. It was further argued that the accused failed to discharge the onus and that all the allegations stand proved on record.

**5.1** On the other hand, the Ld. counsel for the defence argued that there is no evidence on record to prove that any dowry demands were made. It was argued that there is no evidence on record to show that the deceased was harassed by any of the accused persons on account of any dowry demand. It was further argued that it is evident from the testimony of the witnesses that the deceased had herself committed suicide and that the accused persons had no role to play in her death. It was

further argued that the ingredients of Sec. 304B IPC or even of Sec. 498A IPC could not be proved by the prosecution and as such, the presumption u/s 113B of the Indian Evidence Act cannot be raised against the accused persons. It was argued that there is no incriminating evidence against the accused persons and they are entitled to be acquitted.

**5.3** I have heard the arguments addressed by the Ld. Addl. PP as well as Ld. Defence Counsel. I have also gone through the entire record.

### **APPRECIATION OF EVIDENCE & REASONING**

**6.0** Coming to the facts of the instant case, it is not in dispute that the victim had got married to accused Mahesh Pal on 29.11.2020. It is also not in dispute that after her marriage, she was residing at her matrimonial house ie. H. no. 37-A, gali no. 1, Rajpur Khurd Extension, New Delhi, till the day of her death. It is also not in dispute that she died an unnatural death by hanging. The prosecution claims that it was a dowry death, whereas the defence claims it to be a case of suicide with no role attributable to the accused persons.

**6.1** Perusal of record would show that on the fateful day, upon being entrusted the call vide GD no. 50A Ex.P-8, PW-12 ASI Rajesh Kumar alongwith PW-11 W/Ct. Meenu and Ct. Mahesh reached the spot i.e. the 3<sup>rd</sup> floor of the matrimonial house of the victim. The mobile crime team, fire-brigade and CAT ambulance also reached the spot. They found the room on the 3<sup>rd</sup> floor bolted from inside. The police officials broke open

the same and entered the room where the victim was found hanging from the ceiling fan with a *chunni* around her neck. Nobody else was found present inside the room. Both PW-12 and PW-11 testified to the said effect. Further, PW-10 SI Ajay, the then Incharge, Crime team and PW-8 Sub Officer, Fire brigade also corroborated the fact that the door of the room was locked from inside. Further, PW-8 in his cross-examination further stated that except the door, there was no other way to get out of the room. The testimonies of the above police officials and fire brigade staff were further corroborated by PW-5 Govind Singh, who was residing as a tenant on the first floor of the same building.

**6.2** All the above prosecution witnesses themselves deposed that the room was locked from inside and when the same was broken open, the victim was found hanging from the fan. No one else was present in the room. Further, it was also confirmed by the prosecution's own witness that other than the door, there was no escape route from the room. The crime team or the IO did not find any sign of a forced entry or exit by someone. Further, the prosecution did not produce any evidence to show that someone had killed the victim and then managed to escape. Also, except the ligature marks on the neck of the victim, no other injuries or signs of violence could be seen on her body. All of the above point towards the only possible conclusion that the victim had in fact committed suicide.

**6.3** It is not in doubt that death occurring "otherwise than under normal circumstances" can be homicidal, suicidal or

accidental. Section 304B IPC endeavors to also address those situations wherein murders or suicides are masqueraded as accidents. Hence, it must be examined whether all the other ingredients of section 304B are satisfied to bring such unnatural death within the meaning of “dowry death”.

**6.4** Now coming to the allegations of harassment on account of dowry demands, the prosecution relied upon the testimonies of PW-1, PW-2, PW-3 and PW-4, who are the mother, brothers and cousin of the victim. The incident in question had taken place on 22.09.2021. The SDM was also informed and called by the IO. However, the family members of the victim did not give any statement to the SDM on that day as the elder brother of victim was not in Delhi. This fact has been recorded by the IO vide GD no. 72A. The statements of the family members were recorded by the SDM on 24.09.2021.

**6.5** A perusal of statement of the mother of victim before SDM Ex.PW-2/B would show that she had stated that the accused persons had not made any dowry demand at the time of the marriage. She stated that accused Premnath told her son Raj Bahadur that his brother had told that he would give money for car however no payment has been made, however, Rajbahadur expressed his ignorance about any such assurance. She further stated that after 4-5 months, the victim had visited her maternal house, till that time also there were no issues with her inlaws, however, subsequently, there used to be altercations on the issue of money, food, etc. She stated that a day before the incident, she had spoken to the victim telephonically. On the day of the

incident, accused Bimla had called her and complained that her daughter abuses them a lot and is also wasteful as she is not frugal in use of cooking oil. She could not talk to her daughter that day as she was told that she had already gone upstairs to her room and is not talking to anyone. Towards the end of her statement, she also stated that the accused persons would ask her daughter to do household work and that accused Mahesh had beaten up her daughter on being instigated by his sister. The said statement clearly shows that there are no clear and specific allegations of dowry demand or harassment on account of any such demand. Even on the day of the incident, the conversation between her and the mother in law of the deceased was around the conduct and behavior of the victim and had no reference to any harassment related to dowry. Even the brothers of the victim had given similar statements to the SDM.

**6.6** While getting their testimonies recorded before the court, the witnesses made major improvements to their versions. PW-1 improved his version by claiming that when he had gone to the matrimonial house, the accused persons demanded money in lieu of the car. He also claimed that the accused persons would not allow the victim to make phone calls to her family. He further improved his version by claiming that he was once told by her sister that she was being tortured by her inlaws. He also introduced another incident by claiming that in 2021, he had visited her sister's matrimonial house and assured her inlaws that he will pay the amount demanded by them in lieu of the car. He also improved his version by claiming that on 22.09.2021, when he talked to his sister on the phone, she appeared scared and

asked him to pay the demanded amount or to take her to his house. He was confronted with his statement recorded by the SDM but could not give any satisfactory explanation for such material improvements. He also could not tell any date, month or occasion when such demand of money in lieu of vehicle was raised by the accused persons. He also could not tell any specific instance when his sister was subjected to any cruelty or harassment by the accused persons. Rather he admitted that it was her sister's husband, accused Mahesh, who would book travel tickets for the family members and relatives of the victim, when they used to visit the victim. The above puts a question mark on the veracity of PW-1's testimony and rather renders the same doubtful. The other family members also made similar improvements in their versions while deposing as prosecution witnesses. PW-1 claimed that he was disturbed about his sister's death and due to this reason could not state the complete facts to the SDM. However, as noted above, the incident had occurred on 22.09.2021. the family members had not got their statements recorded immediately, rather, they waited for the elder son and got the statements recorded only on 24.09.2021 after discussion with the family members.

**6.7** It is also noteworthy that after the post-mortem, the body of the victim was handed over to her family. The family then willingly handed over the body to the accused persons for carrying out the last rites. Had their daughter been subjected to such cruelty and had they got a slightest of inkling that the accused persons had caused her death, they would've never handed over her body to the accused persons. The same coupled

with absence of any clear and specific allegations against the accused persons in statements to the SDM also lead the court to take such materially improved testimonies of the witnesses with a pinch of salt.

6.8 Ld. Addl. PP sought to argue that since the death was unnatural and had occurred within seven years of marriage, presumption under section 113B of the Evidence Act must be drawn against the accused persons. This argument cannot be accepted as the presumption does not come into play till the time the necessary ingredients are not proved by the prosecution. The Hon'ble Supreme Court in the case of *Satbir Singh vs. State of Haryana* CrI. Apl. 1735-36/2010 while summarizing the law under section 304B IPC and section 113B, Evidence Act, inter-alia held that the prosecution must at first establish the existence of necessary ingredients for constituting an offence under section 304-B IPC. Once these ingredients are satisfied, the rebuttable presumption of causality, provided under section 113-B Evidence Act operates against the accused and not otherwise.

6.9 In the instant case, as noted above, the witnesses materially altered and modified their versions while deposing before the court as compared to the statements given by them to the SDM. The allegations were general and omnibus which lacked specifics. Such vague and doubtful allegations do not have the effect of fulfilling the necessary ingredients for the offence under section 304B IPC. Hence, the presumption under section 113B, Evidence Act is not triggered.

**6.10** In the end, it could not be proved that the unnatural death of the victim was a dowry death punishable under section 304B IPC. It also could not be proved that the accused persons had treated the victim with cruelty or harassed her in connection with any demand of dowry. Even the ingredients of section 498A IPC are also not satisfied.

**7.0** In view of the above discussions, I am of the opinion that the prosecution has failed to prove its case against the accused persons. Hence, **all the accused persons namely Prem Nath, Mahesh Kumar and Bimla Devi are acquitted of the offence u/s 498A/304B IPC.**

Bail bonds cancelled. Sureties are discharged. Original documents, if any, of the surety be released to them against acknowledgment after cancellation of endorsement, if any.

Accused persons are directed to furnish bonds u/s 437A Cr.PC in the sum of Rs.10,000/- which shall remain in force for a period of 06 months.

**File be consigned to Record Room.**

**Announced in Open court  
On this day 31.05.2024**

**(Gaurav Gupta)  
Special Judge-NDPS/ASJ (South)  
Saket Courts/31.05.2024**