

PART-II

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 972 OF 2007****SAMEDEEN**

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APPELLANT**VERSUS****STATE OF UTTAR PRADESH**

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RESPONDENT**O R D E R**

1. This appeal arises out of the following facts:-

Islaman, the deceased herein, daughter of P.W. 4 - Azeez had been married to Samedeen, appellant, allegedly in the year 1988. As per the prosecution story, the accused were not happy with the dowry that had been given and on several occasions the deceased had complained to her parents that she was being ill-treated both verbally and physically. As a consequence of this ill-treatment, a Panchayat had been called and the accused had undertaken that they would not harass her any further. The story, further, goes that despite the assurances held out by the accused with regard to their behaviour with the deceased, the ill-treatment

continued and about ten days before the incident, Islaman had returned to her parents' home, but on the intervention of the members of the Panchayat, however, she had returned to her in-laws' home a few days later. On 26th September, 1994, Samedeen, the appellant, and Suleman, his brother came to the house of P.W. 4 - Azeez and told to him that Islaman was missing. Azeez, already suspicious about the conduct of the accused, detained them in his house and informed the Shahur Police about the fact that his daughter was missing but no action was taken by the Police on that complaint. On the contrary, on 27th September, 1994, one Ravindra Kumar lodged a report with the Adarsh Mandi, Shamli Police Station through Exhibit Ka.1 that the dead body of the wife of Samedeen was lying in his sugarcane field. On receiving this information, a case under Section 302/201 was registered at the Police Station against unknown persons. The prosecution story further goes that dissatisfied with the steps that the police had taken on the complaint filed by him, Azeez also made a written complaint to the Superintendent of Police, Muzaffar Nagar, Exhibit Ka.2 on the 27th September, 1994, making allegations against Samedeen and his family. On the completion of the investigation a charge sheet under Section 304B/34 read with Section

498A of the IPC was filed against Suleman and Samedeen aforesaid, a third brother Subedeen and their parents Jahoor Hasan and Vakeela and the matter was brought to trial. The Additional Sessions Judge, Muzaffar Nagar, in the course of his judgment dated 1st March, 2001 held that the date of marriage of Samedeen with Islaman was uncertain and in this view of the matter, the question as to whether the death had taken place within 7 years of marriage or that the demand for dowry had been made soon before death was again not proved on record. The Court further held that the complaint Exhibit Ka.2 was an after thought and had obviously been created to fill up a lacuna in the prosecution story and the evidence of P.W. 4 and P.W. 5, (the latter being the brother of the deceased) with regard to the demand for dowry etc. was not worthy of belief. The Court further opined that the version given by P.W. 4 with regard to the meeting of the Panchayat was again not proved on record and having held to the above effect acquitted all the accused. The State of U.P. thereafter filed an appeal against acquittal before the Allahabad High Court. The High Court in the course of its judgment observed that the marriage had taken place on the 22nd October, 1988 as per the statements of P.Ws. 4 and 5, and as the death had occurred within 7

years thereafter i.e. on 26th September, 1994 and the statements of P.Ws. 4 and 5 with regard to the demand of dowry soon before the death read with the presumption raised against an accused under Section 113B of the Evidence Act, the case against the husband i.e present appellant had been proved on record and having held as above reversed the judgment of the trial court qua the appellant herein but dismissed the State appeal with regard to the other four accused. Samedeen is the solitary appellant before us after special leave.

2. We have heard the learned counsel for the parties and gone through the record very carefully.

3. At the very outset, we must emphasise that the High Court appears to have ignored the basic premise in law that if the trial court had rendered its judgment on a proper appreciation of the evidence and that the findings arrived at were possible thereof and that the judgment of the trial court could not be said to be perverse, no interference was called for. A perusal of the judgment of the trial court reveals that its judgment cannot by any stretch of imagination be said to be perverse. The trial court has considered the various facets of the case which had created a doubt about the prosecution story inasmuch as that there was

uncertainty about the date of the marriage, there was no evidence of a demand for dowry soon before the death or even long before that date and that the story given in the ocular evidence by P.W. 4 and P.W. 5 was a clear after thought as the issue with regard to the dowry or the ill-treatment meted out to the deceased had not been referred to by them in their statements under Section 161 Cr.P.C., even though the statement of P.W.-5 Mustakeen the deceased's brother had been recorded about 40 days after the incident. It is also significant that the High Court has chosen to believe the prosecution story with regard to only one of the five accused. From a perusal of the evidence in this case it is quite clear that there was absolutely no distinction in the role given to all the five accused and the allegations made against them were more or less identical. We are, therefore, unable to understand as to how the High Court was in a position to appreciate the evidence in a way whereby the appellant has been convicted and the appeal of the State dismissed qua four persons. The reasons given by the High Court that as the couple i.e. Islaman and Samedeen, were living together made their case distinct and different vis-à-vis the other accused must be rejected for the reason that in a case of demand for dowry, the couple living

separately would not be the only determining factor and what is to be seen is the over all nature and quality of the evidence. As already mentioned above, the evidence with respect to all the accused is more or less identical and the High Court was, therefore, not justified in making a distinction between the two sets of accused.

4. We have also gone through the merits of the case on the basis of the arguments advanced by the learned counsel for the parties. It will be seen that one of the primary ingredients for conviction under Section 304B of the IPC is that a demand should be made soon before the death. No such demand is discernible. We have also gone through the document Exhibit Ka.2 which is a copy of the complaint allegedly made by P.W. 4 to the Superintendent of Police, Muzaffar Nagar. This document had been produced before the trial court for the first time on the date when the evidence was recorded i.e. in August, 1999, i.e. five years after the incident. We are unable to appreciate as to how this document was taken into evidence as it was secondary evidence and therefore required to be proved under Section 65 of the Evidence Act. Even otherwise, the story projected therein appears to be unbelievable and is clearly contradicted by the statement made by

Azeez _ P.W. 4 in the course of his testimony. It is indeed very significant that a question was pointedly put to P.W. 4 in his cross examination whether the document produced by him had been prepared in the office of his Advocate a short while earlier. He persistently refused to answer the question and when the trial judge examined the document he found that the ink on the thumb impression was still wet. It is, therefore, obvious that Exhibit Ka.2 was a document which had been created on the day when the evidence was being recorded and the finding of the trial court, therefore, that it is a forged document, was fully justified. Furthermore, a perusal of Ex. P2, the FIR reveals that the incriminating circumstances against the accused have not been spelt out. For example, there is no reference to a demand for dowry or to the fact that there had been ill-treatment of Islaman on account of the inability of her parents to meet the dowry demands. The statement of P.W. 5 is equally ambivalent. Though his statement under Section 161 Cr.P.C. had been recorded 40 days after the incident he had even then made material improvements in his statement in Court exactly in the manner as in the case of P.W. 4 Azeez. We are, therefore, of the opinion that the trial court was fully justified in observing

that the statements of these witnesses could not be believed. In the light of the fact that a demand for dowry has not been proved to be made shortly before the death which happened on 27th September, 1994, the presumption under Section 113B of the Evidence Act which is to be taken against an accused, is not available to the prosecution.

5. We, accordingly, allow the appeal and order the acquittal of the appellant. As the appellant is in jail he is directed to be released forthwith if not wanted in any other case.



.....J
[HARJIT SINGH BEDI]

.....J
[J.M. PANCHAL]

NEW DELHI
NOVEMBER 17, 2009.

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RESPONDENT

O R D E R

We have heard the learned counsel for the parties.

Vide our separate reasoned order, we have allowed the appeal and set aside the conviction of the appellant and ordered his acquittal.

It is stated by Mr. S.S. Nehra, the learned counsel for the appellants that the appellant is in jail. We direct that he be set at liberty forthwith if not required in connection with any other case.

The reasoned order to follow.

.....J
[HARJIT SINGH BEDI]

.....J
[J.M. PANCHAL]

NEW DELHI
NOVEMBER 17, 2009.