

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

REVIEW PETITION (CRL.) NO.627 OF 2009

IN

CRIMINAL APPEAL NO.1731 OF 2008

Reshma Devi & Anr.

... Appellants

Vs.

State of Pubjab & Anr.

... Respondents

J U D G M E N T

R. V. Raveendran J.,

Petitioners (accused 2 and 1 respectively) and three others were tried for an offence punishable under 304-B of Indian Penal Code (for short, 'IPC') relating to the death of Anju Rani, wife of accused No.1 - Jolly Singla. Accused No.2 (Reshma Devi) is the mother of Accused No.1; third and fourth accused are the brothers of accused No.1; and fifth accused is the wife of the third accused. The Sessions Court, Patiala by its judgment dated 13.6.2002 convicted all the five accused under section 304-B of IPC and sentenced them to undergo rigorous imprisonment for seven years and pay a

fine of Rs.5,000/- each and in default undergo further imprisonment of eight months. Two appeals were filed against the said judgment – Crl.Appeal No.992-SB of 2002 by accused nos. 1, 2, 3 and 5 and Crl.Appeal No. 1012-SB of 2002 by accused no.4. Both appeals were heard together and disposed of by the Madhya Pradesh High Court by common judgment dated 31.10.2006. The High Court acquitted accused 3, 4 and 5. It dismissed the appeal filed by the accused 1 and 2 (petitioners 2 and 1 herein) and confirmed their conviction and sentence. The High Court while so dismissing the appeal of accused 1 and 2 observed as follows in the operative portion of the judgment:

“Jolly Singla is stated to have already undergone imprisonment and released”.

“Accused-appellant Reshma Devi shall surrender to undergo the remaining sentence. Her bail bonds are cancelled.”

2. The said judgment was challenged by the second respondent herein (father of the deceased, the complainant). In the first part of the Special Leave Petition, the State was made the first respondent and accused 1, 3 and 5 were shown as respondents 2 to 4. In the second part of the Special Leave Petition, the State was shown as the first respondent and accused no.4 was shown as the second respondent. The second accused (Reshma Devi) was not impleaded as a respondent before this court, presumably because the

High Court had affirmed her conviction and sentence and directed her to surrender to undergo the remaining sentence. The appellant before this court had thus no grievance in regard to the High Court judgment in so far as Reshma Devi (accused No.2) was concerned.

3. A Division Bench of this Court presided over by C.K. Thakker J., granted leave and allowed the appeals in part by judgment dated 5.11.2008. This Court held that there was no infirmity in the reasoning of the High Court as also the conclusions therein and therefore, there was no ground to interfere with the order of acquittal recorded in regard to accused 3 to 5. This Court also held that the dismissal of the appeal filed by accused no.1 and accused no.2 by the High Court by confirming the order of conviction and sentence did not call for interference. This Court however further observed :

“In our opinion, however, the High Court was wrong in observing that the respondent no.2 herein (accused no.1) husband of Anju Devi had already undergone the sentence.....When we asked the learned counsel for Respondent 2 as to how the High Court recorded the above finding, he could not give satisfactory reply on what basis it was *stated* before the High Court that Accused 1 husband had *already* undergone imprisonment and was released. We, therefore, asked the learned advocate for the State of Punjab to file an affidavit stating the basis of the statement and release of Accused 1. Such affidavit was filed on behalf of the State and the learned Government Pleader stated that it was as per the Order dated 14-8-2002 issued by the Government of Punjab, Department of Home Affairs and Justice (Jails Branch) that Accused 1 was treated as having undergone imprisonment for seven years.”

It then examined the said Government Order dated 14.8.2002 referred in the affidavit and held as follows :

“21. The order was issued by the Government of Punjab in exercise of power conferred by Section 432 of the Code of Criminal Procedure, 1973 and Article 161 of the Constitution. Clause A provides for remission of sentence of imprisonment for life in certain cases. It is, however, expressly stated that the benefits referred to in that part of the order would not apply to certain cases. The said head reads thus:

“These benefits are not admissible in the following cases.”

Sub-clause (vii) of that part deals with offences under *Section 304-B IPC i.e. a dowry death.*

22. It is, therefore, clear that in case of dowry death, an offence punishable under Section 304-B IPC, the benefit of remission of the government order does not apply. If it is so, in our opinion, the benefit could not be granted to Respondent 2 husband. Hence, even if Accused 1 or Accused 2 had been released before completion of seven years, such action could not be said to be legal and lawful. If it is so, obviously, the appeal deserves to be allowed to that extent.

23. For the foregoing reasons, the appeal deserves to be partly allowed and is allowed by directing Respondent 2 Jolly Singla to surrender to custody and to remain in jail for a period of seven years which he had to undergo as per the order of the trial court. If such benefit is granted to Accused 2, she also had to surrender to custody till the period of seven years is over.

24. The appeal is accordingly allowed to the above extent.”

3. Aggrieved by the directions in paras 22 and 23, accused nos.2 and 1 (petitioners 1 and 2) have filed this review petition inter alia contending as follows :

(i) Reshma Devi - Accused no.2 (petitioner no.1 herein) had not been impleaded as a party in the criminal appeal filed by the complainant before this Court. Therefore, this Court ought not to have made any observation or order adverse to her interest. Consequently, the observation that “if such benefit is granted to accused no.2, she had to surrender to custody till the period of seven years is over” is liable to be deleted.

(ii) The Government Order dated 14.8.2002 had been misread by this Court and the observation that the benefits of remission under the said notification was not available to accused 1 and 2 was contrary to the said Government order.

4. There is considerable force in both the contentions. Accused no.2 (petitioner no.1) was not a party to the appeal before this court. But while disposing of the appeal, this Court directed that if she had been granted the benefit under the Government Order dated 14.8.2002, she also has to surrender to custody till the period of seven years is over. Obviously as accused no.2 was not a party and as she was not heard, no observation could have been made in the judgment of this Court nor any direction could have been given to her detriment, that too in regard to a matter which was not the subject matter of the appeal.

5. We may next consider the second contention with reference to the Government Order dated 14.8.2002. The said Government Order dated 14.8.2002 contains two parts. Part A relates to “*Remission of balance of sentence of imprisonment for life as on 15.8.2002*” in regard to four categories of prisoners. The Government order provides that the benefit under Part A would not be admissible in respect of eight categories of offences enumerated therein, including serial no.(vii) pertaining to “offences under section 304-B of IPC that is a dowry death”. The said provision that the benefit of remission is not available in regard to offence under section 304-B of IPC is with reference to remission of balance of *sentence of imprisonment for life* under Part A. Therefore, Part A of the Government Order dated 14.8.2002 relating to remission of balance of sentence of imprisonment for life and the exceptions thereto are wholly inapplicable in regard to cases where the sentence is not imprisonment for life. In this case, the sentence was not for imprisonment for life. The sentence was rigorous imprisonment for seven years. Part B of the said Government Order relates to *special remission of one year to prisoners who have been convicted by the courts of criminal jurisdiction in the State of Punjab and confined in jail as on 15.8.2002*. The said remission under Part B is made inapplicable to nine types of offences enumerated therein. The exclusion list does not contain or

refer to offences under section 304-B of the Code. Thus, the special remission of one year under the Government Order dated 14.8.2002 was available to persons convicted for a term of seven years for the offence under section 304-B of IPC. This court, while disposing of the criminal appeal, under the erroneous assumption that the case fell under Part A and not Part B of the Government Order dated 14.8.2002, had observed that the benefit of the said Government Order was not available to accused 1 and 2, overlooking the fact that benefit of remission under Part B thereof was in fact available.

6. In view of the above, the judgment dated 5.11.2008 in Criminal Appeal No.1731/2008 is reviewed and paras 18 to 24 of the said judgment are deleted and instead the following is added: “The appeals are therefore dismissed.” If accused nos.(1) and (2) had been extended the benefit of Part B of Government Order dated 14.8.2002, the same shall not be disturbed.

.....J.
(R V Raveendran)

New Delhi;
August 25, 2010.

.....J.
(D K Jain)