

PETITIONER:
PREM SINGH, SMT. SHANTI

Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT: 06/08/1998

BENCH:
G.T. NANAVALI, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

WITH
CRIMINAL APPEAL NO 1077 OF 1997
J U D G M E N T

S.P. KURDUKAR, J.

These two criminal appeals are filed by the appellants accused challenging the legality and correctness of the judgment and order dated 1st September, 1997 passed by the High Court of Punjab & Haryana at Chandigarh whereby both the appellants were convicted under Section 304-B of the Indian Penal Code and were sentenced to suffer RI for a period of ten years and to pay a fine of Rs. 5,000/- each, in default thereof to undergo RI for a period of one year. The High Court after analysing all the circumstances and the evidence on record found that the order of acquittal dated 14th October, 1992 passed by the Addl. Sessions Judge, Sonapat for the aforesaid offence was unsustainable. Since the trial Court and the High Court differed in their conclusions as regards the guilt of the appellants, we have gone through both the judgments of the courts below as well as the material on record in order to satisfy whether the High Court was justified in reversing the order of acquittal in respect of both the appellants.

2. Prem Singh-appellant in CrI. Appeal No. 1032 of 1997 (original accused No.1) is the son of Smt. Shanti, the appellant in CrI. Appeal No. 1077 of 1997 (original accused No.2). There is no dispute that Sumitra (since deceased) was married to A-1 on 24th June, 1998. Suraj Bhan (PW 4) is the father of Sumitra. He was serving as a teacher at the relevant time and celebrated the marriage of Sumitra befitting to his status. Within few days of marriage, Sumitra was complaining to him and Phool Devi (PW 5), mother of the deceased that the appellants were illtreating and harassing her on the ground of insufficient dowry. They were also tanning her that she (Sumitra) belonged to a poor family of a teacher who could not celebrate the marriage by giving sufficient gifts and dowry. Suraj Bhan then met the appellants and pleaded that whatever he could give, he had given and any further demand would be beyond his means. In the meantime, Sumitra gave a birth to a baby boy and the hopes of her parents were brighten as they expected this new

child would bring harmony between the daughter and the son-in-law. Since constant demand of money from the appellants was continued even after the son was born to Sumitra, Phool Devi (PW 5) suggested to Suraj Bhan (PW 4) that instead of giving any money to the appellant, they should purchase a she-buffalo which would be a source of income to them. Despite giving this she-buffalo, the appellants were not satisfied. It is alleged by the prosecution that some eight months prior to the date of incident in question which took place on 3rd August, 1990 when Sumitra had come to the house of her parents, she told about the additional demand of Rs. 5,000/- made by the appellants. Mr. Tek Chand (PW 6) who happened to be a common friend tried to mediate and asked A-1 to take back his wife and treat her properly. However, there was no change in the attitude of the appellants and consequently on 3rd August, 1990 during night Sumitra suffered burn injuries in the house of A-1. A-1 then removed Sumitra to Civil Hospital, Sonapat and sent a message to Suraj Bhan about the burn injuries sustained by her. Suraj Bhan (PW 4) and Phool Devi (PW 5) on receipt of information of burn injuries sustained by Sumitra, went to the Civil Hospital, Sonapat where Sumitra told her parents that unless Rs. 5,000/- were paid to the appellants, they will not allow her to live peacefully. Suraj Bhan (PW 4) was unable to meet the demand immediately. Unfortunately for the family of Suraj Bhan (PW 4), Sumitra died in the early hours of August 11, 1990. Om Parkash was sent to the house of Suraj Bhan (PW 4) who informed about the death of Sumitra. Suraj Bhan (PW 4), Phool Devi (PW 5) and other relatives went to the house of appellants and when they inquired from them as to how Sumitra died, none of the family members of A-1 could give factory explanation. Suraj Bhan (PW 4) then proceeded to the police station. In the meantime, an information was received by ASI Ram Parkash that Sumitra died in mysterious circumstances and it was suspected that she might have consumed poisonous substance. Suraj Bhan (PW 4) who was proceeding towards the police station met ASI Ram Parkash and told him that death of Sumitra was caused by the appellants as he was unable to meet their demand of additional dowry/amount of Rs. 5,000/-. The complaint was then forwarded to the police station for registering the offence against the appellants. ASI Ram Parkash (PW 7) then proceeded towards the house of A-1 and started the investigation. After holding the inquest panchanama, the dead body was sent to the civil Hospital, Sonapat for conducting post mortem. The statements of various persons came to be recorded. After completing the investigation, A-1 and A-2 were put up for trial before the Session Court for an offence punishable under Section 304-B IPC.

3. A-1 in his statement recorded under Section 313 Cr.P.C. denied that he had ever demanded any money from the parents of Sumitra or ill-treated her physically or mentally and caused any harassment to her on the ground of insufficient dowry. According to him when she sustained accidental burn injuries, she was taken to the hospital by him and was given every possible medical treatment to save her from agonies of burn injuries. Sumitra's death, according to him, was either suicidal or accidental. She might have consumed the poison and, therefore, there was froth in her mouth. He pleaded that he is innocent and has been falsely implicated in the present prime.

4. The defence of A-2 was that she has been residing separately from his son A-1 and she had no knowledge as to how Sumitra sustained the burn injuries and died on 11th August, 1990. She never demanded any dowry nor was

dissatisfied with the gifts given by Sumitra's parents. having regard to the circumstances in which she died, it could be a case of either suicidal or accidental death for which she played no role. She is innocent and she be acquitted.

5. The prosecution in support of its case on the issue of illtreatment adduced the evidence of Suraj Bhan (PW 4), Phool Devi (PW 5) and Tek Chand (PW 6). As regards the cause of death, the prosecution relied upon the evidence of Dr. R.N. Tehlan (PW 1) and the post mortem report submitted by him. In addition thereto, reliance was placed on various circumstances to show that the death of Sumitra was homicidal and not suicidal or accidental.

6 The defence in support of its case examined Dr. Satyawati Sharma (DW 2) to show that A-1 had taken her to Civil Hospital, Sonapat for treatment. Ram Singh (DW 2), a neighbour was examined by the defence to indicate that no illtreatment was given to Sumitra Dr. (Mrs) Sharda Arora (DW 1) was also examined by the defence to show that Shanti (A-2) was admitted in her nursing home from 6th August, 1990 to 14th August, 1990.

7 The Trial Court on appraisal of oral and documentary evidence on record found that the prosecution had failed to prove beyond reasonable doubt that A-1 and A-2 demanded dowry/money from Sumitra and her parents inasmuch as none of the prosecution witnesses on this issue could consistently give evidence at what point of time such demands were made. If the prosecution had failed to prove such demand relating to dowry/money, then the cause of ill-treatment or harassment caused to Sumitra could not be accepted. The trial court believed the evidence of Dr. Satyawati Sharma (DW 2) who gave medical treatment to Sumitra for her burn injuries. Dr. R.N. Tehlan (PW 1) who had failed to preserve the viscera and also failed to get the opinion of chemical analyser to rule out the possibility of poisonous substance having been swallowed by Sumitra, it could not be positively held that the appellants had caused the death of Sumitra.

8. The High Court while highlighting some of the features of the case had very succinctly dealt with the prosecution evidence in detail and demonstrated that the order of acquittal recorded by the trial court is contrary to the evidence on record and, therefore, legally unsustainable.

9. After hearing learned counsel for the parties and after going through the materials on record, we are satisfied that the judgment and order of conviction rendered by the High court suffers from no infirmity as far as A-1 is concerned. The reasons for our affirming the impugned judgment are as under:-

To begin with, we may take up the case of Shanti (A-2) first. It is not in dispute that A-2 was residing separately from A-1 in a separate house. The prosecution had failed to adduce the evidence on record to show that A-2 was present at the time of incident in question at the house of A-1. it is true that as far as all demands of dowry/money were concerned, Suraj Bhan (PW 4), Phool Devi (PW 5) and Tek Chand (PW 6) referred to what was communicated to them by Sumitra. Sumitra used to say that the appellants were not satisfied with the dowry/gifts given to her at the time of marriage. Suraj Bhan (PW 4) and Phool Devi (PW 5) who were the best witnesses on this issue made a general statement that Sumitra told them that the appellants were demanding additional dowry/money as they were not satisfied with the dowry/gifts given at the time of marriage. However, both the witnesses have failed to narrate any specific instance wherein A-2 had caused any illtreatment or harassment to

Sumitra on the issue of additional dowry or money. Apart from this when A-2 was residing separately from her son and when there is no positive evidence on the record to show that either A-2 was instigating A-1 to demand of additional amount of dowry/money and for that purpose telling him to cause illtreatment or harassment to Sumitra it would be unsafe to hold A-2 responsible for an offence punishable under Section 304-B IPC. Moreover, such a additional payment of money was to benefit A-1 alone and not A-2 because there is no evidence on record to suggest that A-1 was helping A-2 neither by giving some money and/or other benefits., If this be so, in our opinion, the High Court was not justified in convicting Shanti (A-2) for the offence under Section 304-B IPC. It is for this precise reason, we give benefit of doubt to A-2 and acquit her of the charge under Section 304-B IPC. to this extent, the impugned judgment stands modified and the CrI. Appeal No. 1077 of 997 filed by Smt. Shanti (A-2) is allowed and consequently she is acquitted.

10. Coming to the case of the prosecution as regards the complicity of A-1, we find that the evidence of Suraj Bhan (PW 4), Phool Devi (PW 5) and Tek Chand (PW 6) is unblemish as regards the demand of additional dowry/money from Sumitra and her parents and for not acceding to such demands causing illtreatment and harassment to her. Suraj Bhan (PW 4) in his evidence has given all the necessary details as to how on each occasion whenever Sumitra came to his house, narrated the incidents of illtreatment and harassment caused to her on the ground of not bringing sufficient dowry and also not fulfilling the additional demand of money. Phool Devi (PW 5) has corroborated in all material particulars the evidence of Suraj Bhan (PW 4). There is no effective cross-examination of both these witnesses on this issue. There are some minor inter-se inconsistencies as regards the time factor which do not affect the substratum of the prosecution case. Tek Chand (PW 6) is an independent witness from the village who at one time mediated on the issue of additional demand of money and persuaded A-1 to take his wife Sumitra and matter would be sorted out amicably. In the face of this evidence, we have no manner of doubt that A-1 has caused ill-treatment and harassment to Sumitra including beating on various occasions for not getting additional amounts/dowry. The High Court has very carefully examined the evidence of all these witnesses and in our considered view the finding recorded by the High Court in this behalf suffers from no infirmity. The High Court has given very good reasons and pointed out as to how the finding recorded by the trial court is unsustainable. We are in agreement with the reasons recorded by the High Court.

11. Coming to the criticism as regards the finding of unnatural death of Sumitra due to burn injuries and the illtreatment caused to her by A-1, learned counsel for A-1 urged that the evidence of expert Dr. R.N. Tehlam (PW 1) is inconclusive because he ought to have preserved the viscera and should have forwarded the same to the chemical analyses for his opinion to rule out the possibility of Sumitra having consumed a poisonous substance. After going through the evidence of Dr. R.N. Tehlam (PW 1), we are of the opinion that there was no occasion for him to suspect that any poisonous substance was consumed by Sumitra. The cause of death given by Dr. R.N. Tehlam (PW 1) is that Sumitra died due to asphyxia as a result of smothering which was ante mortem in nature and was sufficient to cause death in the ordinary course of nature. Dr. Tehlam also found that there were multiple abrasions and contusions on the body of Sumitra, reddish brown contusions were also found over the

upper and lower lip all around. During cross-examination, he asserted that death was due to asphyxia as a result of smothering. In the face of this positive evidence, we have no manner of doubt that Sumitra died due to asphyxia due to smothering-an unnatural death. The death had occurred admittedly within the seven years of the marriage of A-1 and Sumitra. A strong presumption does arise in the present case and A-1 has failed to give any probable and reasonable explanation as to how Sumitra died in his house. No explanation whatsoever has been offered by A-1 as to how Sumitra sustained several abrasions and contusions on her body. The explanation given by A-1 is that Sumitra might have swallowed some poisonous substance is far from truth and was rightly rejected by the High Court. Learned counsel for A-1 strongly relied upon the evidence of Dr. Sharma (DW 2) and urged that if A-1 had no love and affection for his wife, he would not have bothered to take Sumitra for treatment to Civil Hospital, Sonapat. Assuming that such a treatment was given to Sumitra by A-1 that does not demolish the prosecution case as regards the unnatural death of Sumitra on August 11, 1990.

12. Learned counsel for A-1 urged that any additional demand of dowry would not be covered by the definition of dowry under Section 2 of the Dowry Prohibition Act, 1961. This argument needs to be just stated and rejected. This argument completely overlooks the amended definition of dowry contained in Section 2 and it reads thus:-

"In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly-

(a) XXX XXX XXX

.....

at or before {or any time after the marriage} {in connection with the marriage of the said parties but does not include} dower of mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies."

In view of this amended provision, we are unable to accept the contention raised on behalf of A-1 that additional demand of dowry would not fall under Section 2 of the Dowry Prohibition Act, 1961.

13. The sum and substance of the above discussion is that the prosecution has successfully brought home the guilt of A-1 of an offence punishable under Section 304-B IPC and the High Court was justified in convicting A-1 for the said offence. The conviction of A-1 under Section 304-B IPC is upheld. As regards the quantum of sentence, we see no reason to interfere with the sentence awarded by the High Court. There is, therefore, no substance in the criminal appeal No. 1032 of 1997 filed by A-1.

14. For the foregoing reasons, the Criminal Appeal No. 1077 of 1997 filed by Shanti (A-2) is allowed. Her conviction and sentence for an offence punishable under Section 304-B IPC is quashed and set aside and she is acquitted. She be set at liberty forthwith. The Criminal Appeal No. 1032 of 1997 filed by Prem Singh (A-1) is devoid of any merit and it is accordingly dismissed.