

CASE NO.:
Appeal (crl.) 1612 of 2005

PETITIONER:
KISHAN SINGH & ANR

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT: 12/10/2007

BENCH:
C.K. THAKKER & P. SATHASIVAM

JUDGMENT:
J U D G M E N T

C.K. THAKKER, J.

1. The present appeal is filed by the two appellants against an order of conviction and sentence recorded by the Addl. Sessions Judge, Gurdaspur on April 30, 2002 in Sessions Case No. 128 of 1999 and confirmed by the High Court of Punjab & Haryana at Chandigarh on May 4, 2005 in Criminal Appeal No.950-SB of 2002. By the said order, the Courts below convicted the appellants herein for offences punishable under Sections 304B and 315, Indian Penal Code (IPC). For an offence punishable under Section 304B, IPC the appellants were ordered to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for three months, whereas for an offence punishable under Section 315, IPC, they were ordered to undergo imprisonment for three years.

2. The facts of the case in nutshell are that Reeta Kumari, daughter of Tilak Singh and Sudershana Rani-PW2, got married to Manmohan Singh (original accused No.1) on February 19, 1999 as per Hindu rites and ceremonies. According to the prosecution, sufficient dowry was given by the parents of Reeta Kumari at the time of marriage as per their financial status and capacity. However, Reeta Kumari, immediately after marriage, disclosed on her first visit to parental home after 3-4 days that the accused were subjecting her to taunts and harassments for not bringing scooter and golden bangle (kara) in dowry. The young bride was told in clear terms that if the demands of the accused of scooter and golden bangle would not be met with, she should not come back to matrimonial home. Even thereafter, during her visit to parental home at 2-3 occasions, Reeta Kumari informed her family members that the accused were repeating their demand of scooter and golden bangle. She was, however, pacified by Sudershana Rani and other family members to return to matrimonial home on an assurance that scooter and golden bangle would be given when the complainant's husband (Manmohan Singh)

would come on leave. It may be stated that the husband of deceased Reeta Kumari was serving in Indian Army. It is further the version of the prosecution that about 14 days prior to the occurrence, PW7-Dharminder Singh, brother of Reeta Kumari went to village Kahnuwan at the matrimonial home of deceased Reeta Kumari to enquire about the welfare of his sister. On return, he informed his mother Sudershana Rani that Reeta Kumari was being subjected to maltreatment by the accused on account of demand of dowry and that he had brought Reeta Kumari with him to parental home. Complainant Sudershana Rani, thereafter, had a talk with the accused persons and assured that their demand of scooter and golden bangle would be fulfilled after Manmohan Singh would return. Reeta Kumari was, therefore, again sent back to matrimonial home along with PW4-Gopal Singh, cousin of Reeta Kumari. On June 20, 1999, at about 3.30 p.m., one Mangat Ram, who acted as mediator for the marriage between Reeta Kumari and Manmohan Singh, informed parents of Reeta Kumari that Reeta Kumari died after consuming some poisonous substance. On hearing the news, Sudershana Rani-complainant, along with her son Dharminder Singh and nephew Daulat Singh went to the house of the accused at village Kahnuwan where they found dead body of Reeta Kumari lying in a room. Statement of Sudershana Rani was recorded at Ex.PB (FIR 111) on the same day by PW 9 Swinder Singh (Station Inspector) who met them at the bus stand, Kahnuwan.

3. The prosecution case also disclosed that at the time of death, Reeta Kumari was pregnant with a child of about 12 weeks gestation period in her womb. It was alleged by the prosecution that death was caused by the accused and it was a dowry death. Challan was, therefore, presented against the accused for offences punishable under Section 304B, 315 and 498A, IPC. Since an offence punishable under Section 304B, IPC was exclusively triable by a Court of Session, the trial Magistrate committed the case to the Sessions Court, Gurdaspur. Charge was framed against the accused, the contents thereof were read over and explained to them. The accused pleaded not guilty to the charge and claimed to be tried.

4. The accused denied to have committed any offence. According to them, they were falsely implicated by the police. It was further stated that accused Manmohan Singh and deceased Reeta Kumari (husband and wife) had gone to Vaishno Devi and were returning from the temple on the previous day of the occurrence. When they reached near Pathankot, the deceased insisted that they should first visit her parental village Kahnuwan whereas husband Manmohan Singh, accused No.1 insisted that they should go to the matrimonial home first. That was the reason for consuming Aluminium Phosphate by the deceased Reeta Kumari and thus the deceased committed suicide.

5. The prosecution, in order to bring

home the guilt of the accused, examined nine witnesses including important witnesses, PW2-Sudershana Rani, complainant and mother of deceased Reeta Kumari; PW4-Gopal Singh, cousin brother of deceased Reeta Kumari and PW7-Dharminder Singh, brother of deceased Reeta Kumari.

6. The charge was framed against five accused i.e. accused No.1-Manmohan Singh, husband of the deceased; accused No.2-Janak Singh, brother-in-law of the deceased, accused No. 3, Kishan Singh, father-in-law of the deceased, accused No. 4, Bachni Rani, mother-in-law of the deceased and accused No.5-Sushma Rani, sister-in-law of the deceased.

7. The trial Court, after appreciating the evidence on record and on the basis of depositions of PW2 Sudarshana Rani-complainant, PW 4 Gopal Singh and PW 7 Dharminder Singh held that as far as accused No.5-Sushma Rani was concerned, she had already married prior to the marriage of Manmohan Singh and was staying with her husband and two children at matrimonial home at village Kaulsher which was at a distance of 60-70 KMs. from Kahnawan. She had been referred to in the FIR as the sister of accused No. 1, Manmohan Singh. She would not have been benefited by the demand of dowry of scooter and golden bangles. The trial Court, therefore, held that it could not be said that she was a party to demand of dowry as also in causing death of deceased Reeta Kumari. She was accordingly ordered to be acquitted by the Court.

8. Regarding Manmohan Singh-accused No.1, husband of Reeta Kumari, the trial Court observed that he was serving in Indian Army. He took leave from February 15, 1999 to March 26, 1999. The marriage was performed on February 19, 1999. After the marriage, he again joined service. Thereafter he came on leave from June 14, 1999 to July 9, 1999. In the circumstances, according to the trial Court, it could not be said that he was responsible for committing offences punishable under Sections 304B and 315, IPC. The Court, however, held that there was demand of dowry by accused No.1-Manmohan Singh, husband of Reeta Kumari as stated by PW 2 Sudarshana Rani, PW 4 Gopal Singh and PW 7 Dharminder Singh. Accused No. 1 Manmohan Singh was, therefore, held liable for an offence punishable under Section 498A, IPC.

9. As to accused No.2-Janak Singh, brother in law of the deceased, accused No.3-Kishan Singh and accused No.4-Bachni Rani, father-in-law and mother-in-law of deceased Reeta Kumari, the Court held that it was proved beyond reasonable doubt that they had committed offences punishable under Sections 304B and 315, IPC. As already stated earlier, sentence was awarded on accused No.3-Kishan Singh and accused No.4-Bachni Rani, father-in-law and mother-in-law of the deceased by the trial Court. So far as accused No.2-Janak Singh was

concerned, the trial Court held that he was a juvenile when the offence was committed which was clear from the perusal of his birth certificate. The Court, therefore, forwarded him to the Juvenile Court for passing an appropriate order of sentence in accordance with law.

10. Being aggrieved by the order of conviction and sentence, three accused persons, viz. accused No.1-Manmohan Singh-husband, accused No.3-Kishan Singh- father-in-law and accused No.4-Bachni Rani-mother-in-law preferred an appeal before the High Court.

11. The High Court again examined the evidence on record, heard the arguments of the parties and considered the reasons recorded and conclusions arrived at by the trial Court. It held that as far as accused Nos. 3 and 4, parents-in-law of deceased Reeta Kumari were concerned, the trial Court was fully justified in convicting both of them for offences punishable under Sections 304B and 315, IPC. Accordingly, their conviction as well as order of sentence was maintained.

12. As to accused No.1-Manmohan Singh-husband, however, the High Court held that from the evidence, it was not proved that he was responsible for committing an offence punishable under Section 498A, IPC. The Court observed that he was serving in Indian Army and was occasionally attending matrimonial home after taking leave. There was no sufficient evidence of demand of dowry by accused No. 1. The trial Court, hence, was not right in convicting him under Section 498A, IPC. He was, therefore, ordered to be acquitted.

13. The order convicting accused Nos. 3 and 4, father-in-law and mother-in-law of deceased Reeta Kumari under Sections 304B and 315, IPC recorded by the trial Court and confirmed by the High Court is challenged in the present appeal.

14. On September 23, 2005, notice was issued on Special Leave Petition as also on the application for bail. On November 28, 2005, leave was granted and the appellants were directed to be released on bail on their executing a bond for a sum of Rs.25,000/- each to the satisfaction of the Addl. Sessions Judge, Gurdaspur, Punjab. On September 18, 2006, an order was passed by the Court directing the Registry to post the appeal at an early date. The matter thus has been placed before us.

15. We have heard learned counsel for the parties.

16. The learned counsel for the appellant contended that both the Courts committed an error in convicting the appellants for offences punishable under Sections 304B and 315, IPC. According to the learned counsel, there was no demand of dowry by the accused and it could not be said that death of deceased Reeta Kumari was due to harassment because of demand of dowry. It was also urged that the evidence of PW2-

Sudershana Rani, PW4-Gopal Singh and PW7-Dharminder Singh was not reliable and they ought not to have been believed by Courts below. According to the counsel, all the three witnesses were \021interested\022 witnesses being close relatives of the deceased, PW2-Sudershana Rani-mother, PW4-Gopal Singh and PW7-Dharminder Singh-cousin brother and real brother, respectively. It was also contended that there were material contradictions in their evidence as to when so called demand of scooter and golden bangle was made. According to one version, such demand was made at the time of shagun, whereas according to other version, it was towards the dowry. Witnesses were aware that shagun and dowry were not one and same. Thus, the prosecution was not certain as to the occasion of alleged demand. It was also stated that from the evidence of Harbhajan Singh-DW1 and Ramesh Shirodkar-DW2, it was proved that the accused were having scooter as also motorcycle. If it were so, there was no occasion to demand scooter which was the case of the prosecution. On all these grounds, it was submitted that both the Courts were wrong in convicting the appellants and appeal deserves to be allowed.

17. The learned counsel for the State submitted that the order of conviction and sentence recorded by the trial Court and confirmed by the High Court does not call for interference. According to him, from the prosecution evidence, it was clearly established that deceased Reeta Kumari was maltreated and harassed for dowry. Immediately after her marriage on February 19, 1999, when she came to parental home within few days, she complained that dowry demand was made by her in-laws and even thereafter, the demand was repeated. Reeta Kumari was pregnant at the time of death. Both the Courts were, therefore, right in convicting the appellants under Section 304B and 315, IPC.

18. Having heard learned counsel for the parties, in our opinion, no case has been made out by the appellants so as to interfere with the decision of the Courts below. Admittedly, Reeta Kumari married to accused No.1-Manmohan Singh on February 19, 1999. The case of the prosecution is very clear that in-laws of Reeta Kumari started harassing her by making demand of dowry. She was told that her parents should give to accused persons scooter and golden bangle. She was also told by the accused that she should not return to matrimonial home if she would not bring scooter and golden bangle. Both the Courts considered the evidence of prosecution witnesses and recorded a finding that prosecution was able to prove the case beyond reasonable doubt as to demand of dowry by the accused.

19. Section 304B (Dowry death) was inserted by Act 43 of 1986 with effect from November 19, 1986. The said section reads thus: 304B. Dowry death

(1) Where the death of a woman is caused by any burns or bodily injury or occurs 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 for, or 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.

Explanation- For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

20. In order that this section may apply, the following ingredients must be satisfied;

(i) the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;

(ii) such death must have occurred within seven years of her marriage;

(iii) the woman must have been subjected to cruelty or harassment by her husband or by relatives of her husband;

(iv) cruelty or harassment must be for or in connection with demand for dowry;

(v) such cruelty or harassment is shown to have been meted out to the woman soon before her death.

21. In the instant case, the prosecution has examined PW3-Dr.Swinder Kumar. He deposed that on June 21, 1999, he conducted the post mortem on the dead body of Reeta Kumari and found the following injuries;

1. 3 x = cm. abrasion on right side of the anterior of the middle of the neck.

2. 2 x 1 cm. abrasion on right side of the anterior of the middle of the neck just 1 cm. below injury No.1

3. 4 x 2 cm. abrasion on left side of the anterior of the middle of the head.

22. He deposed;

\023On dissection of injuries Nos. 1, 2 and 3, sub-coetaneous tissues of the neck shows extravagation of blood beneath the injured areas. On further dissection, fracture of projection in laryngeal cartilage seen\024.

23. He proceeded to state:

\023The time between injuries and death was immediate and between death and postmortem within 24 hours. In our opinion, based on the report of the Chemical Examiner, which is Ex.PC, the cause of death in this case was ante mortem throttling and consumption of aluminium phosphide, which is a pesticide, Ex.PD is the correct copy of the postmortem report, the original of which I have brought today in the Court which is signed by me and Dr. H.S. Dhillon and Mrs. Raminder Kaler\024.

24. In cross-examination, he stated that the injuries near the mouth were possible if an attempt had been made by someone to prevent taking tablet or trying to take it out. Similarly, injury on the neck could be possible in such a struggle.

25. Thus, from the evidence of Dr.Swinder Kumar-PW3, it was proved that Reeta Kumari died unnatural death. As already noted earlier, Reeta Kumari married to Manmohan Singh on February 19, 1999 and she died on June 20, 1999 i.e. within a period of four months. Thus, the death was caused \023within seven years of her marriage\024. From the prosecution evidence, it was proved beyond reasonable doubt that deceased Reeta Kumari was subjected to cruelty and harassment by the accused in connection with demand of dowry from day of her marriage. The demand was repeated from time to time and it resulted in sad and untimely death of a young bride. But for continuous demand of dowry by the accused and constant harassment, two lives would have been saved. We are, therefore, of the considered opinion that both the Courts were right in convicting the appellants for the offences with which they were charged.

26. In our judgment, both the Courts were right in rejecting defence version that since the accused possessed scooter as well as motorcycle, there was no necessity to make demand of scooter. The High Court observed that it was a matter of common knowledge that even if in-laws had several things in the house, still they demand dowry. Even if we may not go to that extent, in our opinion, in the present case, there was sufficient evidence in the form of sworn testimony of PW2-Sudershana Rani, PW4-Gopal Singh and PW7-Dharminder Singh that there was a demand of dowry by accused and deceased Reeta Kumari had made such complaint

immediately after marriage which was repeated and reiterated. The deceased used to inform about such demand by the accused to her parents. It is, therefore, totally irrelevant whether accused possessed motorcycle or scooter. Demand of dowry in this case was clearly proved and conclusively established by the prosecution.

27. We also find no substance in the contention of the appellants that there was material contradiction in the deposition of prosecution witnesses as to the occasion of making demand, i.e. as shagun or as dowry. From the evidence, it is proved that accused persons insisted for scooter and golden bangle as they had \021obliged\022 parents of Reeta Kumari by allowing her to marry to accused No.1-Manmohan Singh. In our opinion, therefore, both the Courts were right in coming to the conclusion that there was demand of dowry by the accused.

28. The trial Court convicted accused No.1-Manmohan Singh for an offence punishable under Section 498A, IPC. The High Court, however, set aside the said conviction observing that he was not regularly staying with Reeta Kumari as he was serving in Army and used to come only for few days by taking leave. Prosecution witnesses have, no doubt, deposed that demand of dowry was also made by accused No.1-Manmohan Singh-husband of Reeta Kumari and believing the said evidence, the trial Court convicted him. But the High Court was of the view that there was no sufficient evidence to prove demand of dowry by accused No.1-Manmohan Singh and acquitted him. The said acquittal is not challenged by the State. That part of the order thus has become final. The matter, therefore, rests there.

29. For the foregoing reasons, in our opinion, both the Courts were wholly right and fully justified in recording an order of conviction and in imposing sentence on appellants-accused Nos. 3 and 4. We see no infirmity therein and dismiss the appeal and confirm the order of conviction and sentence. Since they are on bail, we direct them to surrender to undergo the remaining period of sentence.

30. Before parting with the matter, we may advert to one aspect. The trial Court, while not accepting the evidence of PW4-Gopal Singh as to demand of dowry by accused No.1-Manmohan Singh-husband of Reeta Kumari, had observed that no such demand could have been made by him. It was because PW4-Gopal Singh had stated that accused No.1-Manmohan Singh ill-treated deceased Reeta Kumari soon after her death. He further stated that 10/12 days prior to the incident, accused No.1-Manmohan Singh reiterated the demand of scooter and golden bangle. Now, accused No.1-Manmohan Singh was on leave from February 15, 1999 to March 26, 1999. Thus, after marriage ceremony on February 19, 1999, accused No.1-Manmohan Singh stayed with his wife for more than a month before reporting

for duty. Thereafter, he again sought leave from June 14, 1999 to July 9, 1999. According to the trial Court, he must have reached his village on or after June 16, 1999 from Goa and Reeta Kumari died on June 20, 1999. Thus, according to the trial Court, accused No.1-Manmohan Singh could not have made demand of scooter and golden bangle 10/12 days prior to the incident. The trial Court, therefore, did not believe that part of the statement of Gopal Singh.

31. The trial Court, however, proceeded to state;

But falsehood in this part of the statement of Gopal Singh, regarding the demand of scooter and golden kara made by accused Manmohan Singh, just 10/12 days prior to the death of deceased is utterly glaring. As already said above the accused Manmohan Singh had taken leave from 15.2.1999 to 26.3.1999, for marriage and after that from 14.6.1999 to 9.7.1999. This leave record was produced by DW2. If accused Manmohan Singh had taken leave from 14.6.1999, he must have reached his village from Goa on or after 16.6.1999. Therefore, the presence of Manmohan Singh in his house at village Kahnawan, just 10/12 days prior to the alleged occurrence when Gopal Singh made visit does not crop up at all.

32. It is unfortunate that the trial Court has made a caustic remark that there was falsehood on the part of PW4-Gopal Singh as to demand of dowry by accused No.1-Manmohan Singh. A Court of law may not accept a particular part of the evidence considering the other facts and circumstances on record. But that does not necessarily mean that what was stated by the witness was false. In fact, PW4-Gopal Singh was believed by the trial Court as well as by the High Court. It may be that the witness had committed some mistake in giving the period during which dowry demand was made by accused No.1-Manmohan Singh. If that part of the evidence is not consistent with the facts on record, the Court may not accept it. But only for that reason, the Court should not make disparaging remarks as has been done by the Court.

33. While dealing with a matter, the Presiding Officer of a Court may extend benefit of doubt to the accused in the light of omissions, contradictions or discrepancies in the deposition of prosecution witnesses. He may also offer comment on the conduct of parties or witnesses. He may as well make necessary observations keeping in view their demeanour. It has been rightly said that the Judges are flesh and blood mortals with likes and dislikes, preferences and prejudices and they

are also normal human traits.

34. Thomas Reed Powell once said; "Judges have preferences for social policies as you and I. They form their judgments after the varying fashions in which you and I form ours. They have hands, organs, dimensions, senses, affections, passions. They are warmed by the same winter and summer and by the same ideas as a layman is."

35. Justice John Clarke has also stated; "I have never known any judges, no difference how austere of manner, who discharged their judicial duties in an atmosphere of pure, unadulterated reason. Alas! we are 'all the common growth of the Mother Earth' - even those of us who wear the long robe." (emphasis supplied)

36. At the same time, however, it cannot be overlooked that judicial restraints and discipline are equally necessary to orderly administration of justice. One must always keep in view golden advice given by S.K. Das, J. in *State of U.P. v. Mohd. Naim*, (1964) 2 SCR 363 : AIR 1964 SC 703;

\023If there is one principle of cardinal importance in the administration of justice, it is this : the proper freedom and independence of Judges and Magistrates must be maintained and they must be allowed to perform their functions freely and fearlessly and without undue interference by anybody, even by this Court. At the same time it is equally necessary that in expressing their opinions Judges and Magistrates must be guided by considerations of justice, fair-play and restraint. It is not infrequent that sweeping generalizations defeat the very purpose for which they are made. It has been judicially recognized that in the matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before courts of law in cases to be decided by them, it is relevant to consider (a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself; (b) whether there is evidence on record bearing on that conduct justifying the remarks; and (c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct. It has also been recognized that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve." (emphasis supplied)

37. In *State of M.P. v. Nandlal*, (1986) 4

SCC 566, while disposing the writ petition, the High Court made certain sweeping observations attributing mala fides, corruption and underhand dealings to the State Government. Holding the disparaging remarks as unjustified, hypothetical and unwarranted, Bhagwati, C.J. observed:

\023We may observe in conclusion that Judges should not use strong and carping language while criticising the conduct of parties or their witnesses. They must act with sobriety, moderation and restraint. They must have the humility to recognise that they are not infallible and any harsh and disparaging strictures passed by them against any party may be mistaken and unjustified and if so, they may do considerable harm and mischief and result in injustice. Here, in the present case, the observations made and strictures passed by B.M. Lal, J. were totally unjustified and unwarranted and they ought not to have been made\024.

38. We are reminded of the following observations of Shetty, J. in A.M. Mathur v. Pramod Kumar, (1990) 2 SCC 533 : JT 1990 (1) SC 545;

\023The Judges Bench is a seat of power. Not only do judges have power to make binding decisions, their decisions legitimate the use of power by other officials. The Judges have the absolute and unchallenged control of the Court domain. But they cannot misuse their authority by intemperate comments, undignified banter or scathing criticism of counsel, parties or witnesses. We concede that the Court has the inherent power to act freely upon its own conviction on any matter coming before it for adjudication, but it is a general principle of the highest importance to the proper administration of justice that derogatory remarks ought not to be made against persons or authorities whose conduct comes into consideration unless it is absolutely necessary for the decision of the case to animadvert on their conduct\024.

(emphasis supplied)

39. In the case on hand, in our judgment, there was no occasion for the trial Court to go to the extent of describing the evidence of PW4-Gopal Singh to be \021false\022. Even if it is conceded that in the light of other evidence on record, the Court was not convinced as to the demand of dowry by accused No. 1 Manmohan Singh, \02110/12 days prior to the incident\022, the Court could have acquitted accused No.1 on that ground. In our considered opinion, however, it

was certainly not a case of making scathing remarks against the witness. All those remarks are, therefore, ordered to be deleted from the record.

40. The appeal is disposed of accordingly.

JUDIS