

PETITIONER:
STATE OF HARYANA

Vs.

RESPONDENT:
RAJINDER SINGH

DATE OF JUDGMENT: 27/02/1996

BENCH:
HANSARIA B.L. (J)
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HANSARIA B.L. (J)
RAY, G.N. (J)

CITATION:
JT 1996 (3) 396 1996 SCALE (2)488

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

HANSARIA, J.

The State-has felt aggrieved at the acquittal of the respondent by the High Court on appeal being preferred to it by him against the judgment of the Sessions Judge by which he was found guilty, along with two others, under Sections 302/34 IPC and 498-A Though the High Court had acquitted all the three convicts, notice was issued by this Court only against the respondent.

2. Shri K. C. Bajaj, learned counsel appearing for the appellant, has contended that the case against the respondent stands established by the judicial confession as well as the extra - judicial confession deposed by P.Ws.2, 4 and 5. The prosecution case also stands corroborated, according to the learned counsel, by the injuries which were found on the person of the deceased. It has been urged that a charge was framed under Section 304- B, and as the death of Vidva was within seven years of her marriage and the same having nexus with demand for dowry, it has to be presumed, in view of what has been stated in Section 113-B of the Evidence Act, that the respondent had caused dowry death.

3. Shri H.S. Rai, Senior counsel appearing for the respondent, has first submitted that the trial court having not convicted the respondent under section 304-B, and there having been no appeal by the State against this acquittal even to the High Court, the case of the respondent qua commission of offence under this section is not open to be examined. On our stating, during the course of hearing of the appeal, that we would be Justified in doing so in as much as there having been a charge under this section, the respondent was put to notice as regards this offence also, Shri Rai addressed us on the merits of the case under this section as well. We heard him on the merit of the acquittal too as ordered by the High Court.

4. In so far as the acquittal under Sections 302/34 and 498-A are concerned, we find that the High Court disbelieved the

making of the extra-judicial confession because the same had been allegedly made even to the father of the deceased and that too in presence of two co-villagers. The High Court has, therefore, observed, and rightly, that it is not acceptable that the respondent would make a confession of such a heinous crime in presence of so many persons. The statement recorded by the learned Magistrate which has been characterized judicial confession is really not so because a perusal of the same shows that the appellant had not admitted his guilt in terms inasmuch as the statement as recorded states abuse assault on the deceased by mistake. It may, however, be that the statement is not true. Now, if a statement is not true, that cannot be used even if the same were to be confessional in nature because the settled law is that for a confession to be used against the maker in a criminal trial the same has to be both true and voluntary.

5. Coming to the case under section 304-B, Shri Rai has brought to our notice the statement as recorded by the police on 28th March, 1989 itself - the occurrence being in 27th March - when two brothers of the deceased were present during the time of inquest. The two brothers happened to be so present because soon after the death of Vidya news has been sent to Vidya's father who had sent his two sons, named, Chotu and Tarachand. Chotu's statement then was that his sister Vidya had dated by falling into the well due to loss of balance at the time of drawing water from it. It may be pointed out that the dead body had been recovered from inside the well: and the prosecuting case is that the same had been thrown therein after causing the death of Vidya by assaulting her with lathi on various parts of her body. Chotu had, however, stated as above after having enquired from the neighbors. This is also the statement of Tarachand, another brother, according to whom the cause of death was falling of Vidya in the well due to loss of balance. He too had stated that nobody was at fault. Tarachand's further statement was that there was no illwill earlier between the parties. The inquest report shows that a machine had been fitted in the well for drawing water - the well being about 70 ft. in depth.

6. Shri Rai also referred the postmortem report in which mention has been made about the following injuries on the person of Vidya :-

- (1) Abrasion scalp side 4 cms. x 3 cms. situated 8 cms. left and anterior to right ear.
- (2) Lacerated wound lateral side of left elbow joint 1 cm. 5 cms. Deformity of left fore-arm was present.
- (3) Lacerated wound personal region 6 cms.x 3 cms. x 6 cms.
- (4) Abrasion lateral side of right thigh 12 cms. x 6 cms.
- (5) Abrasion lateral side of right leg 7 cms. x 4 cms.
- (6) Lacerated wound over chin 1 cm. x 5 cm x 5 cm.
- (7) Lacerated wound right lateral flank of abdomen 1 cm. x .5 cm.
- (8) Lacerated wound on right foot 1.5 cm. x .5 cm x .5 cm.

7. It has been contended by Shri Rai that injury No.3 could not have been caused by a lathi blow because it was between the genital organ and anus; and the breadth of some other

wounds would rule out infliction of the same by lathi inasmuch as the same was even .5 cm . These injuries could, however, be caused during fall in a well fitted with pipe to support the pipe for drawing water. as admitted by the autopsy surgeon (P.W.1) in his cross-examination.

8. We would, therefore, accept the defence version that a false case not instituted on 31st March - the death being on 27th - on which date the FIR of the present case was filed, stating about causing of death of Vidya on failure to meet the demand of dowry. Though P.Ws.2 and 5, who are the parents of Vidya, have mentioned about this demand, we are inclined to place reliance on this piece of evidence on the face of what Tarachand, a brother of the deceased, had stated on 28th March about their being no illwill between the two families. It is because of this that the parents had first accepted the death due to accident, as mentioned in the inquest report, which was prepared by police which came to the scene pursuant to the information given by the respondent himself on the morning of 28th about the mishap.

9. The appeal has thus no merit and it stands dismissed.