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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN

S.B. Criminal Appeal No.517/2001

1. Raghuveer @ Pappu S/o Chhotey Lal
And
2. Smt. Geeta Devi W/o Chhotey Lal
...Accused-appellants
Versus
The State of Rajasthan
...Respondent

Date of Judgment :::: 28th February, 2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Shri S.S. Choudhary, Counsel for accused-appellants
Smt. Nirmala Sharma, P.P., for the State
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//Reportable//

By the Court:-

This criminal appeal under section 374 (2) of the Code of Criminal Procedure, on behalf of accused-appellants - Raghuveer @ Pappu S/o Chhotey Lal and Smt. Geeta Devi W/o Chhotey Lal, is directed against the judgment and order dated 1.8.2001 passed by the Additional Sessions Judge No.1, Sikar, in Sessions Case No.35/2000, whereby both the accused-appellants have been convicted and sentenced under

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Section 304-B of the Indian Penal Code, to ten years rigorous imprisonment.

Briefly stated the facts of the case are that a typed report (Exhibit P-1) was lodged by PW-1 Heera Lal at Police Station Ranoli, District Sikar, alleging therein that on 19.6.1997 he got his daughter Bimla married with Raghuveer. Bimla's husband Raghuveer, father-in-law Chhotey Lal, mother-in-law Geeta Devi and sister-in-law (Jethani) Indra Devi have continuously been making demand of dowry after the marriage, but I had no money to satisfy their demand. On 9.9.2000 at about 11.30 AM an information was given to him of his daughter calling him. Thereupon, he, along with other persons, left for the village Narsa (Vaidh-ki-dhani), on arrival there they saw his daughter Bimla lying dead. Her body was burnt badly. Inquest-report was prepared and thereon their signatures were obtained.

On the basis of above report, an FIR No. 154/2000 (Exhibit P-2) was registered under sections 498-A and 304-B, IPC, and investigation commenced. After completion of investigation, the police filed a charge-sheet against appellants for the offence under Section 498-A and 304-B, IPC. The learned trial court framed charge against both the

appellants under Section 304-B, IPC, which was denied and the trial was claimed.

The learned trial court, after considering the prosecution as well as defence evidence on the record, convicted and sentenced the accused-appellants, as mentioned above.

The learned counsel for the appellant, Shri S.S. Choudhary, contended that the learned trial court has not appreciated the prosecution evidence in its correct perspective along with other circumstances of the case and wrongly convicted and sentenced the accused-appellants. He contended that as per the admitted position of the case itself the incident took place on 9.9.2000, whereas the typed report (Exhibit P-1) was lodged on 12.9.2000 with a delay of three days, and the said delay has not been explained satisfactorily. The complainant party was very much present for all the time i.e. before and at the time of funeral of Bimla took place. The complainant-party also participated in the enquiry initiated under Section 174 of the Cr.P.C. by Sub Divisional Magistrate. The inquest-report was prepared in presence of the father and other family members of Bimla, but they did not make any complaint to Sub Divisional Magistrate. He further contended that from the statement of prosecution

witnesses it is clear that no specific instance of demand of dowry has been stated. General allegations have been made by the prosecution witnesses including the parents of the deceased about demand of dowry. He further contended that from the prosecution evidence it is clear that it is a case of death of deceased Bimla either in accident or suicide committed by Bimla herself and on the same day Bimla's father-in-law Chhotey Lal lodged a written-report (Exhibit D-7) at Police Station Ranoli, and a case was registered under Section 174, Cr.P.C. Shri Chhotey Lal also sent one Madan Kumawat immediately to inform the parents of Bimla at Lakshmangarh, about the incident, and to ask them to arrive there immediately; on this information they came but no complaint was made by anyone. It is further contended that accused Raghuveer himself sustained injury while rescuing Bimla. It is further contended that Kaushalya (PW-11) is cousin-sister of the deceased but she did not support the prosecution case. PW-1 Heera Lal, in his statement (Exhibit D-1) recorded before the police under Section 161, Cr.P.C., stated that there was no demand of dowry by accused-persons. It is further contended that PW-1 Heera Lal took a loan of Rs.40,000/- from Chhotey Lal (DW-1), the father of accused Raghuveer, at the

time of marriage of Bimla with Raghuvir, as Heera Lal was financially weak at that time and was not in a position to perform the marriage of his daughter Bimla with Raghuvir and, Chhotey Lal wanted to go abroad after getting the marriage of his son Raghuvir with Bimla, performed. The said amount was not refunded by Heera Lal to Chhotey Lal even for a long time after the marriage. The so-called demand of Rs.10,000/- and Rs.20,000/- was in respect of the amount advanced by Chhotey Lal to Heera Lal, which cannot be treated as demand of dowry in connection with marriage of Bimla.

The learned counsel for the appellants also contended that, although from the prosecution evidence it is not proved that there was any demand of dowry by any of the accused-persons, even if the statement of PW-1 Heera Lal is read correctly then the allegation of demand of Rs.10,000/- and Rs.20,000/- appears to have been made by accused Raghuvir and not by accused Smt. Geeta, the mother-in-law of deceased, therefore, in any circumstance, the trial court has committed an illegality in convicting co-accused Smt. Geeta in the facts and circumstances of the present case.

The learned counsel for the appellants lastly contended that accused Raghvire was arrested way-

back on 19.9.2000 and he is in custody till date as he was not granted bail during trial and during pendency of the appeal, therefore, he has already undergone the imprisonment of about six years and five months, therefore, his sentence of imprisonment may be reduced to a period of sentence of imprisonment already undergone by him. So far as Smt. Geeta Devi is concerned, it is contended that she remained in jail for about 25 days during trial and for a period of three months and 21 days after conviction by the trial court and before suspension of her sentence by the High Court, therefore, she has already undergone the imprisonment of about four months and sixteen days and her sentence may be reduced looking to the nature of prosecution evidence against her and other facts and circumstances of the present case.

The learned Public Prosecutor contended that there is sufficient prosecution evidence on the record to connect the accused-persons with the crime and the learned trial court is right in convicting and sentencing them. During the course of arguments, the learned Public Prosecutor also referred the prosecution evidence and on that basis it is contended that from the statement of PW-1 itself it is clear that there was demand of dowry by the

appellants and accused-persons killed Smt. Bimla by pouring kerosene-oil upon her and from the medical evidence it is clear that she sustained 80 to 90% burn injuries.

So far as sentence of imprisonment awarded by the learned trial court against accused-appellants is concerned, it is contended that the learned trial court has rightly awarded the sentence of ten years rigorous imprisonment and the appeal filed by the accused-persons is liable to be dismissed.

I have considered the submissions of the learned counsel for both the parties and minutely scanned the impugned judgment as well as the record of the trial court.

The marriage of deceased Bimla took place on 19.6.1997 with accused Raghuveer. They also got one child out of this wedlock. Smt. Bimla died due to the burn injuries. As per the postmortem report (Exhibit P-19), the burns were ante-mortem in nature and were 80 to 90% caused by dry heat. The cause of death is hypovolumic and neurogenic shock due to loss of massive protein rich fluids which are sufficient to cause death. Exhibit D-7 is the written-report lodged by Chhotey Lal (DW-1), the father of accused Raghuveer, at Police Station Ranoli on 9.9.2000 itself, wherein it was mentioned

that at about 8.30 or 9.00 in the morning deceased Bimla set herself on fire by closing the door of the room from inside. When he was in the market, he received the message from his grandson; immediately he rushed to the spot and thereafter left the spot to lodge the present report. Chhotey Lal (DW-1) sent one Madan Kumawat at Lakshmangarh to inform the parents of the deceased about the incident and also to bring them immediately; the parents of Bimla, accompanied with 3-4 family members, reached at the spot. The inquest-report was prepared by S.D.M. in presence of PW-1 Heera Lal, PW-2 Shiv Bhagwan (brother of Heera Lal) and others. The postmortem was conducted on 9.9.2000 itself. Thereafter funeral of Bimla took place. The present typed-report was lodged by Heera Lal (PW-1) on 12.9.2000 and accordingly case was registered.

The learned trial court has convicted the accused appellants for the offence under Section 304-B, IPC. Section 304-B reads as under:-

"304-B. 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."

Section 113-B of the Evidence Act is also relevant in this regard, which reads as under:-

"113-B. Presumption as to dowry death. - When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation. - For the purpose of this section, 'dowry death' shall have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860)."

A legal fiction has been created in the said provision to the effect that in the event it is established that soon before the death, the deceased was subjected to cruelty or harassment by her husband or any of his relatives; for or in connection with any demand of dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death. Parliament has also inserted Section 113-B of the Evidence Act by the Act 43 of 1986 with effect from 1.5.1986, which has been reproduced above.

From a conjoint reading of Section 304-B of the Penal Code and Section 113-B of the Evidence Act, it will be apparent that a presumption arising thereunder will operate if the prosecution is able to establish the circumstances as set out in Section 304-B of the Penal Code.

The basic ingredients of Section 304-B, IPC, as reproduced above, show that the death of a woman has been caused by any burns or bodily injury or in some circumstances, which were not normal, within seven years from the date of her marriage and victim was subjected to cruelty or harassment by her husband or any relative of her husband and such cruelty or harassment should be for or in connection with the demand of dowry and further that such

cruelty and harassment was made soon before her death.

From the facts of the case in hand it is clear that the marriage of Bimla took place on 19.6.1997 and she died on 9.9.2000, meaning thereby it happened only after about three years and three months from her marriage or it can be said that she died within seven years from the date of her marriage by burns injuries under the circumstances which were not normal, which is clear from the postmortem-report also. The question for consideration and decision in the present appeal is whether Bimla was subjected to cruelty or harassment by accused-appellants for, or in connection with, demand of dowry made soon before her death, and these facts are required to be proved on the basis of evidence available on the record.

PW-1 Heera Lal, the father of the deceased, stated before the trial court that the marriage of Bimla took place with Raghuvir. In their marriage, he gave sufficient dowry as per his capacity. The dowry articles included - bed, chair, watch and cash amount of Rs.5100/-. His daughter, whenever came from her in-laws, used to tell him that, although he has done good in her marriage, her husband Raghuvir, mother-in-law Geeta, sister-in-law

(Jethani) Indra and father-in-law Chhotey Lal are not happy with the dowry given in the marriage and always used to taunt upon her about less dowry and it has become unbearable for her to face the accused-persons. It is also stated that once Bimla came on 'Rakshabandhan' festival with her son aged 12 months and told him that though he has given much dowry but her husband is not happy and satisfied therewith. Her husband told her that he wants to purchase a Jeep and for that purpose asked her to bring Rs.10,000/- from her father (PW-1). PW-1 told her that her brother Gulab has come from Pune but he has not brought anything, however, he will arrange for the amount within 15 days; thereafter, on 3.9.2000 he (PW-1) went her in-law's village Narsa-ki-dhani and gave Rs.10,000/- with clothes in presence of her son-in-law, who further raised a demand of Rs.20,000/-. Thereupon, he assured him that he will arrange for it also. On 9.9.2000, he received a telephonic message regarding the call of his daughter Bimla and after receiving her call, he, along with Mahaveerji, Keshardev, Geegraj, Shiv Bhagwan, Vinod Kumar, went to her in-law's village. Upon reaching there they saw the dead body of Bimla lying there. She was burnt badly. Thereafter inquest-report was prepared in their presence. Upon

seeing the dead-body, he became nervous and could not speak anything. On 12.9.2000 again they went to village Narsa-ki-dhani and heard a rumour there that his daughter Bimla was killed by her in-laws. Exhibit D-1 is the police statement of PW-1 Heera Lal recorded on 13.9.2000; therein he stated at one time that there was no demand of dowry but subsequently he stated that on 3.9.2000 he had gone to Bimla's in-laws village and gave Rs.10,000/- with clothes to his son-in-law, but his son-in-law further told him to pay Rs.20,000/- more, as he wanted to purchase a Jeep. He assured him that he will arrange for it also within twenty days or a month after. A suggestion was put to him in his cross-examination during trial about taking of loan of Rs.40,000/- at the time of marriage by him from DW-1 Chhotey Lal, but he denied. However, he admitted that the amount of Rs.20,000/- was demanded by his daughter that there is need of it and he should give it.

PW-2 Shiv Bhagwan (the brother of Heera Lal) stated that Bimla used to tell him that her mother-in-law used to taunt and assault her by saying that she has brought less dowry in the marriage. He always assured her that good-sense will prevail in the mind of her-in-laws, and she will be alright in

near future. PW-3 Gulab Chand is the brother of deceased, who stated that after marriage his sister was being teased by her husband Raghuveer, mother-in-law and sister-in-law by saying that dowry was insufficient. They used to demand money also.

PW-5 Dr. S.S. Sharma stated that burn injuries were 80 to 90% and they were sufficient to cause death in the ordinary course of nature. PW-6 Jai Narain Meena, A.C.M. No.2, Sikar, proved the inquest-report (Exhibit P-4) and, in his cross-examination, admitted that at the time of preparing Exhibit P-4 Heera Lal, the father of deceased Bimla was also present on the spot. He also admitted that Fateh Singh Jadaun, Dy. S.P., was also present at that time.

PW-7 Shanti, the mother of deceased, also stated that her daughter Bimla told her at number of times that her in-laws are not satisfied with the dowry given in the marriage. Once Bimla came on 'Rakshabandhan' festival; she told her that Raghuveer (Bimla's husband) had asked her to bring Rs.20,000/-, as he wanted to purchase a Motor. Shanti sent Rs.10,000/- with Bimla's father at her in-laws house.

PW-9 Fateh Singh Jadaun, the Circle Officer, stated that on 9.9.2000, a written-report (Murg

No. 16/2000) was received and he went with A.C.M., to the spot and the A.C.M. made an enquiry under Section 174, Cr.P.C. The inquest-report was prepared in presence of the parents of deceased. He admitted that during the investigation the allegation, alleged in FIR against Chhotey Lal and Indra Devi, were found false and they were not made accused in the case. He also admitted that nearest neighbours Pokhardas and Pannalal were not included in the list of witnesses in the charge-sheet. He also admitted that Heera Lal, the father of deceased, was called before preparing the inquest-report.

PW-11 Kaushlyya, cousin-sister of deceased Bimla, also married in the same village where deceased Bimla was married. She stated that Bimla's mother-in-law never told anything to her father. However, she has been declared hostile by the prosecution. In her cross-examination, she admitted that it is correct that Bimla's father took Rs. 40,000/- as loan from Bimla's father-in-law at the time of Bimla's marriage and the said amount was not refunded and Bimla used to tell her that her parents have not refunded the said loan amount to her-in-laws and that is why she was very nervous.

Accused Raghuveer, in his statement, recorded under Section 313 Cr.P.C., stated that on the date

of incident he saw something burning in his house; he immediately rushed to the place and saw that Bimla was burning; he immediately tried to rescue her and while doing so he also sustained injuries. At that time Bimla was alone in the house. It was further stated that his father had given Rs.40,000/- in his marriage to Heera Lal (PW-1), the father of Bimla, as a loan, and on account of non-refund thereof Bimla was in a great tension.

DW-1 Chhotey Lal stated that his son Raghuveer was married with Bimla. The engagement of his son with Bimla took place about seven years ago. He wanted to go Dubai, therefore, he called Bhagat Ram, the mediator of this proposal, and asked him to have a talk with Heera Lal that either he should marry his daughter with Raghuveer this time, otherwise he will not be available for two years as he will be leaving for Dubai shortly. Bhagat Ram had a conversation with Heera Lal regarding early marriage of Bimla with Raghuveer as Chhotey Lal wanted to go Dubai. Heera Lal told him that this time his financial position is not good, therefore, he showed his inability to solemnize the marriage shortly. Thereafter, Chhotey Lal told him that he has Rs.40,000/-, which can be given to him as loan, if he can solemnize the marriage ceremony soon. The

amount of Rs.40,000/- was given by him to Heera Lal in presence of Bhagat Ram and Pokharmal and the marriage was fixed after twenty days. Thereafter Chhotey Lal left for Dubai and remained there for about one-and-half-year. Neither Chhotey Lal nor his wife nor son ever teased Bimla in connection with demand of dowry. He even did not tell Bimla to bring the loan amount of Rs.40,000/-, which was given to her father at the time of marriage. Bimla herself was in tension because of non-refund of the amount of Rs.40,000/-, by her father to her father-in-law and she used to live in tension for that. On 9.9.2000, he, his son Raghuveer, wife Geeta, another daughter-in-law Indra, next son Ashok and child of Raghuveer had been to their agriculture field. Bimla did not accompany them and remained at the house itself. Thereafter he received a message from Madan that a telephone has come from his house that Bimla has sustained burn injuries. Thereafter he came back and lodged a report and also sent Madan Kumawat at Lakshmangarh to inform her parents about the incident and that they should reach there immediately. He further stated that at the time of preparing the inquest-report, the Magistrate and police had asked Heera Lal and Shiv Bhagwan about any complaint but both of them replied in negative

and thereafter funeral of Bimla took place.

DW-2 Ashok also stated that his uncle Raghuveer told him to give telephonic message to Madan Ji Bairathi to send his grandfather Chhotey Lal at the house immediately. DW-3 Madan Lal was also examined, who stated that on the request of DW-1 Chhotey Lal, made on the date of incident, he proceeded for Ranoli and brought Bimla's father Heera Lal along with her Tau (elder brother of Heera Lal) and 5-6 other persons. DW-4 Pokharmal stated that a sum of Rs.40,000/- was given in his presence by Chhotey Lal to Heera Lal. He further stated that the in-law's of Bimla never assaulted her for any reason.

The statement of the prosecution witnesses show that no specific instance has been given for demand of dowry from or committing cruelty on Bimla or assaulting her during the period of three-and-half year of her marital life. The prosecution did not examine a local resident of village Narsa-ki-dhani to prove that in-laws of Bimla ever made any complaint to her for bringing less dowry or that they assaulted or harassed her for or in connection with demand of dowry. One specific instance has been stated by PW-1 Heera Lal that on 'Rakshabandhan' festival her daughter had come to his house and

stated that her husband has told her that he wanted to bring a Jeep, therefore, she should bring Rs.10,000/- from her father. Thereafter on 3.9.2000 he went to her in-laws' village Narsa-ki-dhani and gave Rs.10,000/- with clothes in presence of his son-in-law. His son-in-law further raised a demand of Rs.20,000/-. Other allegations in respect of demand of dowry are general in nature. There is no specific demand about any specific amount or specific article viz. TV, Freeze, Scooter etc. A suggestion was put to PW-1 about the loan of Rs.40,000/- given by Chhotey Lal (DW-1) to him but he denied. However, DW-1, DW-4 and PW-11 have stated that Heera Lal was financially weak at the time of marriage, therefore, a sum of Rs.40,000/- was given to him by Chhotey Lal. PW-1 has also stated that his daughter told him that he has given sufficient dowry but her husband is not happy and satisfied with it. So far as other circumstances or link evidence is concerned, it is clear that no specific instance has been pointed out by the prosecution witnesses regarding demand of dowry from Bimla or subjecting her to cruelty or assaulting her by the in-laws. No neighbour of matrimonial house of Bimla has been examined in the case to prove any demand of dowry or assault on the person of deceased. The

written-report (Exhibit D-7) was immediately lodged by DW-1 Chhotey Lal, the father of appellant Raghuveer, himself. Chhotey Lal sent Madan to inform her parents and bring them immediately; they came before preparing the inquest-report by Magistrate. The inquest-report was prepared by S.D.M., in the presence of Dy. S.P., and the said inquest-report is duly signed by PW-1 Heera Lal and his brother Shiv Bhagwan (PW-2). DW-1 has stated that the Magistrate had asked Heera Lal about any complaint against in-laws of Bimla but he replied in negative and thereafter funeral of Bimla took place. The enquiry under Section 174 of the Cr.P.C. was made in the case and no report was lodged for three days. The specific instance of 3.9.2000 has been alleged only against appellant Raghuveer by PW-1 Heera Lal about demand of Rs.10,000/- and further the amount of Rs.20,000/-. The said evidence cannot be read against accused Mst. Geeta. PW-1 Heera Lal has also stated that Bimla told him that her husband was not satisfied with dowry given in the marriage but he has not stated this thing against accused Geeta Devi. PW-1 in his typed-report (Exhibit P-1) made allegations against Indra Devi and Chhotey Lal also but during investigation of the case by the police, the same were found false, as admitted by PW-9, and

no charge-sheet was submitted against them.

So far as the defence of accused that the amount of Rs.40,000/- was given by Heera Lal to Chhotey Lal is concerned, the same has been denied by PW-1 Heera Lal and PW-7 Shanti, the parents of deceased. The accused examined DW-4 Pokharmal, who stated that a sum of Rs.40,000/- was given by Chhotey Lal to Heera Lal at the time of marriage of Bimla, but DW-1, DW-3 and DW-4 have stated that they never assaulted Bimla for non-refund of the said amount of Rs.40,000/- by her father Heera Lal, therefore, this could not have been a reason for committing suicide or death of the deceased.

After scrutiny of prosecution evidence in detail, as discussed above, I am of the view that from the statements of PW-1 Heera Lal and PW-7 Shanti, a harassment or assault of Bimla by Raghuveer for and in connection with demand of dowry soon before her death is proved. But, so far as accused Geeta is concerned, I do not find any cogent evidence against her that she assaulted or harassed the victim soon before her death for or in connection with demand of dowry, therefore, she is entitled to get the benefit of doubt.

In view of the above discussion, I find that the learned trial court has committed an illegality in convicting accused Geeta. So far as accused Raghuveer is concerned, I find that he has rightly been convicted by the learned trial court.

On the point of sentence, it is clear that accused Raghuveer has already undergone the sentence of imprisonment of about six years and five months but a minimum sentence of seven years is provided under Section 304-B, IPC, therefore, request of the counsel for the appellant cannot be accepted to reduce the sentence of imprisonment of accused Raghuveer to a period of sentence of imprisonment already undergone by him, but after considering all the facts and circumstances of the case I think it fit and proper that ends of justice will meet in case his sentence of imprisonment is reduced to a period of seven years rigorous imprisonment.

Consequently the appeal of accused Smt. Geeta is allowed and her conviction and sentence awarded by the learned trial court is set aside. She is on bail. Her bail bonds are discharged.

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The appeal of accused-appellant Raghuveer is partly allowed. His sentence under Section 304-B, IPC, is maintained but his sentence of imprisonment is reduced to a period of seven years rigorous imprisonment.

(Narendra Kumar Jain) J.

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