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ROHTASH

v.

STATE OF HARYANA

(Criminal Appeal No.878 of 2010)

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MAY 22, 2012

[DR. B.S. CHAUHAN AND DIPAK MISRA, JJ.]

Penal Code, 1860 : ss.302, 498A - Dowry death - Prosecution case that the victim-deceased committed suicide

C *by taking pills/poison as she was harassed by appellant-husband and in-laws - Trial court found material inconsistencies in the deposition of the prosecution witnesses and acquitted all the accused of all the charges - High court upheld acquittal of in-laws, however, reversed order of*

D *acquittal of husband - On appeal, held : The version given by the prosecution witnesses regarding demand of dowry by the appellant did not find mention in the statement u/s.161 Cr.P.C. of either of the witnesses - FSL report did not support the case of the prosecution, rather leaned towards the defence taken by the appellant - In such a fact-situation, defence taken by the appellant in his statement u/s.313 Cr.P.C. plausible - Appellant entitled to benefit of doubt and acquitted of all the charges.*

Appeal: Appeal against acquittal - Scope of interference

F *- Held: The appellate court can interfere with the order of the acquittal only in exceptional cases where there are compelling circumstances and the judgment in appeal is found to be perverse - The appellate court should bear in mind the presumption of innocence of the accused and further*

G *that acquittal by trial court bolsters the presumption of innocence - Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference.*

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The prosecution case was that the daughter of PW.1 aged about 21 years committed suicide by taking poison as she was harassed by her husband and accused in-laws for bringing insufficient dowry. The case of defence was that the deceased was suffering from fits as a result of which she died. The trial court found material inconsistencies in the deposition of the prosecution witnesses and acquitted all the accused of all the charges. The High Court held that there was no evidence to show that the deceased died of fits or was suffering from fits and there was sufficient evidence to show demand of dowry by the appellant from his father-in-law and torture caused to the deceased on the ground of inadequate dowry. The High Court convicted the appellant under Section 304-B IPC and imposed the punishment of 7 years rigorous imprisonment, further under Section 498-A IPC imposed the punishment of six months RI. In respect of other accused the order of acquittal passed by the trial court was maintained. The instant appeal was filed challenging the order of the High Court.

Allowing the appeal, the Court

HELD: 1. PW.1-complainant deposed that her daughter had complained against the ill-treatment given to her by her husband, his parents and his elder brother; they even taunted her that she belonged to "Bhukha-Nanga" family and that her father had not given adequate dowry. The appellant also visited him and asked him to give Rs. 10,000/- so that he could settle himself in some business. Six months after the marriage, he gave Rs.10,000/- to the appellant after selling his house. Her in-laws still continued to ill-treat her and raised a further demand of Rs.5,000/- on the pretext that they wanted to settle the elder brother of appellant in some business. On the fateful day of incident, 'GC' and 'RK' of Village

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- A Mandora came to him and told that his daughter had consumed poisonous tablets and died. He was confronted with his statement under Section 161 Cr.P.C. in respect of demand of Rs.10,000/- by appellant as no such fact was stated by him to the I.O. Even for the
- B demand of Rs.5,000/- for the elder brother of the appellant, he was confronted with his statement under Section 161 Cr.P.C. as no such fact had been mentioned therein. He was also confronted with his statement under Section 161 Cr.P.C. as he had not stated before the I.O.
- C that he had been informed about the death of his daughter by 'GC' and 'RK'. Regarding the sale of the house to PW.2 for fulfilling the demand of dowry, PW.1 has admitted that land belonged to the Wakf Board and, therefore, he could not execute any registered sale-deed in respect of the same. PW.2 also deposed that he had purchased the house from PW.1, complainant, for Rs. 12,000/-, however, no sale-deed could be executed in his favour as the land belonged to the Wakf Board. PW.3 deposed that he had been told by PW.1 that he was under a great pressure to pay Rs.10,000/- to the appellant
- E to buy peace for his daughter and he had given Rs.10,000/- to the appellant. He was confronted with his statement under Section 161 Cr.P.C. where he did not tell the I.O. about this transaction. PW.6, Investigating Officer, deposed that he went to the cremation ground and
- F collected ashes and bones in presence of witnesses and sent it for chemical analysis. In his cross-examination, he has stated that no independent witness was ready to involve himself in the case becoming a prosecution witness as it was a family matter for the accused persons.
- G So far as the statement of the appellant under Section 313 Cr.P.C. was concerned, he replied that the facts and circumstances put to him were not correct. The said depositions would make it crystal clear that the version given by the prosecution witnesses regarding demand of
- H Rs.10,000/- by the appellant did not find mention in the

statement under Section 161 Cr.P.C. of either of the witnesses. The facts regarding the sale of house by PW.1 to PW.2 also did not inspire confidence as the land belonged to Wakf Board. More so, the demand of Rs.5,000/- for establishment of a business of the appellant's brother was made by the in-laws of the deceased and not by the appellant, who had been acquitted by both the courts below. [Paras 6-11] [70-D-H; 71-A-G; 72-C-E]

Appasaheb v. State of Maharashtra (2007) 1 SCC 721; Bachni Devi v. State of Maharashtra (2011) 4 SCC 427: 2011 (2) SCR 627 - relied on.

2. There was ample evidence on record and it was specifically mentioned by the prosecution witnesses, particularly, PW.1, PW.3 and I.O., (PW.6), that some broken pieces of bangles had been collected by the I.O. from the place of occurrence and broken bones and articles were collected from the cremation site and sent for chemical analysis to Forensic Science Laboratory. Unfortunately, none of the courts below took note of the FSL report. The said reports did not support the case of the prosecution, rather leaned towards the defence taken by the appellant. [Para 14] [73-D-F; 74-A]

3. The High Court interfered with the order of acquittal recorded by the trial court. The law of interfering with the judgment of acquittal is well-settled. It is to the effect that only in exceptional cases where there are compelling circumstances and the judgment in appeal is found to be perverse, the appellate court can interfere with the order of the acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for

- A interference. In instant case, there were major improvements/embellishments in the prosecution case and demand of Rs.10,000/- by the appellant did not find mention in the statements under Section 161 Cr.P.C. More so, even if such demand was there, it may not necessarily be a demand of dowry. Further, the chemical analysis report falsified the theory of suicide by deceased taking any pills. In such a fact-situation, the defence taken by the appellant in his statement under Section 313 Cr.P.C. could be plausible. The appellant is given the benefit of doubt and the impugned judgment of the High Court is set aside. The appellant is acquitted of all the charges. [Paras 15, 16] [74-B-H]

- State of Rajasthan v. Talevar & Anr. AIR 2011 SC 2271: 2011 (6) SCR 1050; Govindaraju @ Govinda v. State by Srirampuram Police Station & Anr. (2012) 4 SCC 722 - relied on.*

Case Law Reference:

- E (2007) 1 SCC 721 relied on Para 12
- E 2011 (2) SCR 627 relied on Para 13
- E 2011 (6) SCR 1050 relied on Para 15
- E (2012) 4 SCC 722 relied on Para 15
- F CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 878 of 2010.

- G From the Judgment and Order dated 11.01.2007 of the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 146 DB of 1994.

K.K. Koul, Daya Krishan Sharma for the Appellant.

Sanjiv, Kamal Mohan Gupta for the Respondent.

- H The Judgment of the Court was delivered by

DR. B.S. CHAUHAN, J. 1. This criminal appeal has been filed against the judgment and order dated 11.1.2007 passed by the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 146-DB of 1994, wherein the High Court has reversed the judgment and order of the Sessions Court in Session Case No. 44 of 1989 dated 3.8.1993, by which the appellant has been acquitted of the charges under Sections 304-B and 498-A of the Indian Penal Code, 1860 (hereinafter referred as 'IPC').

2. Facts and circumstances giving rise to this appeal are that:

A. On 4.7.1989 at 8.00 p.m., Jiwan (PW.1) made a statement (Ext.PC) before the police at Rohtak Chowk, Kharkohda to the effect that his daughter Indro, aged about 21 years, was married to appellant Rohtash about one year back and in the said marriage he had given sufficient dowry according to his capacity. However, her husband and parents-in-law were not satisfied with the dowry. They always made taunts for not bringing sufficient dowry. His son-in-law made various demands and the complainant had to give him a sum of Rs.10,000/- He had received information through Gopi Chand and Ram Kishan that his daughter had died by consuming poisonous tablets and her dead body had been cremated in the morning. On the basis of the said statement, FIR was recorded in P.S. Kharkhoda on 14.7.1989 at about 8.10 p.m. under Sections 304, 201 and 498-A of the IPC. S.I. Inder Lal accompanied Jiwan, complainant (PW.1) to village Mandora and went to the house of the accused persons. The accused persons, namely, Smt. Brahmo Devi, Rajbir and Dharampal were found present. He made the inquiries from them and, thereafter, came back to the police station and added the offence under Section 304-B IPC. The said accused as well as the appellant were arrested. The I.O. went to the cremation ground and took into possession the ashes and bones in presence of Jiwan (PW.1), complainant and other witnesses

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- A and after putting them under sealed cover sent the same for FSL report. He lifted broken pieces of glass bangles and prepared a recovery memo in presence of the witnesses. He further recorded the statement of witnesses under Section 161 of Code of Criminal Procedure, 1973 (hereinafter called Cr.P.C.). After completing the investigation, the I.O. submitted the chargesheet and trial commenced for the offences under Section 304-B and 498-A IPC.
 - B. The prosecution in support of its case examined Jiwan (PW.1) complainant, Suresh (PW.2), Fateh Singh (PW.3), Inder Lal (PW.4) and other formal witnesses, however, gave up certain witnesses like Gopi Chand on the apprehension that he had been won over by the accused persons.
 - C. Under Section 313 Cr.P.C., the accused made the statement that they had been falsely implicated in the case. Appellant was leading a happy married life and never ill-treated his wife for not bringing enough dowry. Deceased was suffering from fits, as a result of which she died. Accused persons had informed her parents through Rajbir accused and cremation was done after arrival of Jiwan (PW.1) complainant and his other relatives.
 - D. After appreciating the evidence and considering the documents on record, the trial court reached the conclusion that there were material inconsistencies in the depositions of Jiwan (PW.1), complainant, Suresh (PW.2) and Fateh Singh (PW.3), particularly on the issue of demand of dowry as they could not exactly point out the amount of demand and payment. Suresh (PW.2), though deposed that he had purchased the house of the complainant for a sum of Rs.12,000/-, however, no document could be produced in respect of the same as land under the house belonged to Wakf Board. The prosecution case has been that the complainant has been forced to sell his house to meet the demand of dowry.
 - H The trial court also drew adverse inference for withholding

material witnesses, particularly, Gopi Chand who had informed the complainant about the death of his daughter. The trial court vide judgment and order dated 3.8.1993 acquitted all the accused persons of all the charges.

3. Aggrieved, the State preferred Criminal Appeal No. 146-DB of 1994 before the High Court. The High Court reappreciated the entire evidence and came to conclusion that there was nothing on record to show that Indro, deceased, died of fits; no medical evidence had been produced to show that she had been suffering from fits. There was sufficient evidence on record to show demand of dowry by the appellant from his father-in-law. The appellant had been making taunts and caused torture to the deceased on the ground of inadequate dowry. The demand by the appellant had been fully supported by Suresh (PW.2) who purchased the house of the complainant for a sum of Rs.12,000/. Indro died within a period of one and a half years of marriage. The High Court convicted the appellant under Section 304-B IPC and imposed the punishment of 7 years rigorous imprisonment, further under Section 498-A IPC imposed the punishment of six months RI. In respect of other persons the order of acquittal passed by the trial court was maintained.

Hence, this appeal.

4. Shri K.K. Kaul, learned counsel appearing for the appellant, has submitted that there has been no demand of dowry by the appellant. The High Court did not appreciate the evidence in correct perspective. There had been material contradictions in the deposition of the prosecution witnesses. Suresh (PW.2) could not purchase the house of the complainant as admittedly the land belonged to the Wakf Board and no document had ever been produced in the court to show the sale. Fateh Singh (PW.3) has no direct relationship with the family. He has supported the prosecution case merely because he belonged to the village of the complainant. Appellant had furnished a satisfactory explanation while making his statement

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A under Section 313 Cr.P.C., thus, the appeal deserves to be allowed.

5. Per contra, Shri Sanjiv, learned counsel appearing for Shri Kamal Mohan Gupta, Advocate, for the State, has vehemently opposed the appeal, contending that the Indro, deceased, died within a short span of one and a half years of her marriage. No evidence has been produced by the appellant to show that she had been suffering from fits. There has been persistent demand of dowry as stood proved from the depositions of Jiwan (PW.1), Suresh (PW.2) and Fateh Singh (PW.3), thus, appeal lacks merit and is liable to be dismissed.

6. We have considered the rival submission made by learned counsel for the parties and perused the records.

D It may be pertinent to make reference to the relevant part of the deposition of witnesses. Jiwan (PW.1), complainant, deposed that her daughter had complained against the ill-treatment given to her by her husband, his parents and his elder brother Rajbir; they even taunted her that she belonged to "Bhukha-Nanga" family and that her father had not given adequate dowry. Rohtash accused also visited him and asked him to give Rs. 10,000/- so that he could settle himself in some business. Six months after the marriage, he gave Rs.10,000/- to Rohtash accused after selling his house. Her in-laws still continued to ill-treat her and raised a further demand of Rs.5,000/- on the pretext that they wanted to settle Rajbir, elder brother of Rohtash, in some business. On the fateful day of incident, Gopi Chand and Ram Kishan of Village Mandora came to him and told that his daughter Indro had consumed poisonous tablets and died.

G He was confronted with his statement under Section 161 Cr.P.C. in respect of demand of Rs.10,000/- by appellant Rohtash as no such fact had been stated by him to the I.O. Even for the demand of Rs.5,000/- for Rajbir, he was confronted with H his statement under Section 161 Cr.P.C. as no such fact had

been mentioned therein.

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He was also confronted with his statement under Section 161 Cr.P.C. as he had not stated before the I.O. that he had been informed about the death of his daughter by Gopi Chand and Ram Kishan. Regarding the sale of the house to Suresh (PW.2), he has admitted that land belonged to the Wakf Board and, therefore, he could not execute any registered sale-deed in respect of the same.

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7. Suresh (PW.2) deposed that he had purchased the house from Jiwan (PW.1), complainant, for Rs. 12,000/-, however, no sale-deed could be executed in his favour as the land belonged to the Wakf Board.

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8. Fateh Singh (PW.3) deposed that he had been told by Jiwan (PW.1) that he was under a great pressure to pay Rs.10,000/- to the appellant to buy peace for his daughter and he had given Rs.10,000/- to the appellant. He was confronted with his statement under Section 161 Cr.P.C. where he has not told the I.O. about this transaction.

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9. S.I., Inder Lal (PW.6), Investigating Officer, deposed that he went to the cremation ground and collected ashes and bones in presence of witnesses and sent it for chemical analysis. In his cross-examination he has stated that no independent witness was ready to involve himself in the case becoming a prosecution witness as it was a family matter for the accused persons.

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10. So far as the statement of the appellant under Section 313 Cr.P.C. is concerned, he replied that the facts and circumstances put to him were not correct. In reply to Question No. 10, he stated that his wife Indro did not commit suicide and the allegation of suicide was concocted version. In reply to para 21, he stated as under:

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"The deceased Smt. Indro was leading a happy married

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A life with me and we never ill-treated her, much less on account of any dowry. The deceased was suffering from fits as a result of which she had died. We had informed the parents of the deceased through Rajbir accused and after Jiwan P.W. and his other relations had come to our

B village, we had cremated the dead body of the deceased in their presence in our village. There was no question of our demanding any dowry, much less ill-treating the deceased on that account because our financial position is very sound."

C 11. The aforesaid depositions make it crystal clear that the version given by the prosecution witnesses regarding demand of Rs.10,000/- by the appellant did not find mention in the statement under Section 161 Cr.P.C. of either of the witnesses. The facts regarding the sale of house by Jiwan (PW.1) to Suresh

D (PW.2) does not also inspire confidence as the land belonged to Wakf Board. More so, the demand of Rs.5,000/- for establishment of a business of Rajbir was made by the in-laws of the deceased Indro, and not by the appellant, who had been acquitted by both the courts below, therefore, that issue cannot

E be considered by us.

Only question remains for our consideration is as to whether there was a dowry demand by the appellant and for that purpose the deceased Indro had been ill-treated to the

F extent that she had to take a drastic step of committing suicide.

12. This Court in *Appasaheb v. State of Maharashtra*, (2007) 1 SCC 721, while dealing with the similar issue and definition of the word 'dowry' held as under:

G "A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood."

H 13. The aforesaid judgment was reconsidered by this

Court in *Bachni Devi v. State of Maharashtra*, (2011) 4 SCC 427, wherein this Court held that the aforesaid judgment does not lay down a law of universal application. Each case has to be decided on its own facts and merit. If a demand for property or valuable security, directly or indirectly, has nexus with marriage, such demand would constitute demand for dowry. The cause of raising of such demand remains immaterial.

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14. In view of above, we have to examine as to whether the demand by the appellant for establishment of his tailoring business could be held to be a demand for dowry and further whether for that demand, the ill-treatment given by the appellant to his wife was so grave that she had been driven to the extent that she has to commit suicide.

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The prosecution case has been that Indro, deceased, committed suicide by taking pills/poison. There is ample evidence on record and it has specifically been mentioned by the prosecution witnesses, particularly, Jiwan (PW.1), Fateh Singh (PW.3) and S.I., Inder Lal, I.O., (PW.6), that some broken pieces of bangles had been collected by the I.O. from the place of occurrence and broken bones and articles were collected from the cremation site and sent for chemical analysis to Forensic Science Laboratory. Unfortunately, none of the courts below has taken note of the FSL report though the documents had been marked as Ext.PH and Ext. PH1. The first document is report No. FSL(H) dated 29.5.1990 by the Forensic Science Laboratory, Haryana, Madhuban, Karnal, wherein the result of examination of bones and ashes is as under:

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Ext.1 - some burnt bones alongwith ash (Approximately 1 Kg.)

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Result of the examination - no common metallic poison could be detected in Ext. 1.

Ext. PH1 dated 16.8.1989 revealed that the fragments of bones in Ext. PH1 were identified that they belonged to

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A human individual.

The aforesaid reports do not support the case of the prosecution, rather leans towards the defence taken by the appellant.

B 15. The High Court interfered with the order of acquittal recorded by the trial court. The law of interfering with the judgment of acquittal is well-settled. It is to the effect that only in exceptional cases where there are compelling circumstances and the judgment in appeal is found to be perverse, the appellate court can interfere with the order of the acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference. (Vide: *State of Rajasthan v. Talevar & Anr.*, AIR 2011 SC 2271; and *Govindaraju @ Govinda v. State by Srirampuram Police Station & Anr.*, (2012) 4 SCC 722).

E 16. In view of above, we are of the considered opinion that in the instant case there had been major improvements/ embellishments in the prosecution case and demand of Rs.10,000/- by the appellant does not find mention in the statements under Section 161 Cr.P.C. More so, even if such demand was there, it may not necessarily be a demand of dowry. Further, the chemical analysis report falsifies the theory of suicide by deceased taking any pills. In such a fact-situation, the defence taken by the appellant in his statement under Section 313 Cr.P.C. could be plausible.

G Thus, appeal succeeds and is allowed. The appellant is given the benefit of doubt and the impugned judgment of the High Court dated 11.1.2007 is set aside. The appellant is acquitted of all the charges.

H D.G.

Appeal allowed.