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HARI OM

v.

STATE OF HARYANA & ANOTHER
(Criminal Appeal No. 1167 of 2011)

B

OCTOBER 31, 2014

[FAKKIR MOHAMED IBRAHIM KALIFULLA AND
ABHAY MANOHAR SAPRE, JJ.]

Penal Code 1860:

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ss.304-B and 498-A – Dowry death – Demand of dowry and harassment of bride – Suicide committed by bride after about one month of marriage – Conviction of appellant-husband and life sentence affirmed by High Court – Courts below were justified in holding the appellant guilty of committing the offences punishable u/s 304-B read with s.498-B, which caused death of the bride – However, as the case does not fall in the category of a “rare case” so as to award to appellant life imprisonment, the sentence is reduced to 10 years RI – Sentence/Sentencing.

E

Sentence/Sentencing:

Conviction of husband u/ss 304B and 498-A – Sentence – Court could award sentence in exercise of its discretion between seven years to life imprisonment depending upon the facts of each case — In no case it could be less than seven years and that extreme punishment of life term should be awarded in “rare cases” but not in every case – Penal Code, 1860 – ss.304-B and 498-A.

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Allowing the appeal in part, the Court

HELD: 1.1. The courts below were justified in holding the appellant guilty of committing offences punishable u/s 304-B read with s.498-B IPC, which

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caused death of the bride. Therefore, the conviction of the appellant u/ss 304-B and 498-A IPC is upheld. [para 19 and 27] [443-H; 444-A; 446-D]

1.2. Under s.304-B, the court can award sentence in exercise of its discretion between seven years to life imprisonment depending upon the facts of each case; in no case it can be less than seven years; and the extreme punishment of life term should be awarded in "rare cases" but not in every case. [para 21] [444-D]

Hem Chand Vs. State of Haryana 1994 (4) Suppl. SCR 295 = (1994) 6 SCC 727; *State of Karnataka Vs. M.V. Manjunathgowda and Anr.* 2003(1) SCR 21 = (2003) 2 SCC 188, *G.V. Siddaramesh Vs. State of Karnataka*, 2010 (2) SCR 380 = (2010) 3 SCC 152 – relied on.

1.3. Having regard to the totality of facts and circumstances, the instant case, does not fall in the category of a "rare case" as envisaged by this Court so as to award to the appellant the life imprisonment. That apart, while awarding life imprisonment, the courts below did not assign any reasons. The ends of justice would meet, if the sentence of the appellant is reduced from life imprisonment to that of rigorous imprisonment for 10 years. Ordered accordingly. [para 25] [445-H; 446-A, G]

Case Law Reference:

1994 (4) Suppl. SCR 295 relied on para 22

2003(1) SCR 21 relied on para 23

2010 (2) SCR 380 relied on para 24

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1167 of 2011.

From the Judgment & Order dated 14.05.2010 of the High

A Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 1901-DB of 2004.

Shekhar Naphade, Harikesh Singh, J.B. Mudgil, Atul Bhuchar, Satyendra Kumar for the Appellant.

B Devinder Pratap Singh, AAG, Dr. Sudhir Bisla, Ramesh Kumar, Dr. Monika Gusain for the Respondents.

The Judgment of the Court was delivered by

C **ABHAY MANOHAR SAPRE, J.** 1. This Criminal Appeal is filed by the accused, Hari Om (A-1), against the judgment and order dated 14.05.2010 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal no. 190-DB of 2004, which in turn, arises out of judgment dated 31.01.2004/04.02.2004 passed by the Additional Sessions Judge, Jind in Session Case no. 57/23.12.2002 and Session Trial No. 5 of 13.02.2003.

E 2. By impugned judgment, the High Court dismissed the appeal filed by the appellant (A-1) and upheld his conviction and sentence for the offences punishable under Sections 304-B and 498-A of the Indian Penal Code, 1860 (in short "IPC") and allowed the appeals filed by the co-accused namely, Subhash, Dharam Pal, Ram Chander and Chander Kala (A-2 to A-5) and set aside their conviction and sentence.

F 3. So far as this appeal is concerned, we are only concerned with the conviction and sentence awarded to the appellant - Hari Om (A-1).

G 4. Facts necessary for the disposal of this appeal need to be mentioned in brief.

H 5. As per the prosecution case, Poonam - a young girl having post-graduate degree to her credit, was married to A-1 on 04.07.2002. At the relevant time, A-1 was working as sub-inspector in Delhi Police. In the marriage, Pooam's parents

spent around Rs.6.50 lacs. An amount of Rs. 3.50 lacs was paid in cash to the appellant (A-1) for purchasing a car and the remaining amount was spent on gifts and other expenses. A

6. After a week of the marriage, A-1 made a telephone call to the parents of Poonam and demanded several items - such as furniture etc., which, according to A-1, were not given in marriage. On 21.7.2002, when A-1 visited Poonam's parents house, collected the demanded items. During that time, the appellant(A-1) also complained to them that Sarris given to his relatives in the marriage were of inferior quality and, therefore, they should pay a sum of Rs.20,000/- in cash in lieu thereof. Though Poonam's parents tried their best to convince A-1 that they did their best looking to their financial capacity in the marriage and now it may not be possible for them to satisfy his demands but A-1 did not agree and threatened that if they do not satisfy his demands, he will not keep Poonam with him. B, C, D

7. After sometime, on 30.7.2002, Poonam's parents (complainant) went to the house of A-1 and tried to persuade him and his parents to give up new demands, which included money for purchasing a flat in Delhi. However, out of sheer compulsion, Poonam's parents agreed to pay the amount as demanded at the earliest. On this assurance, A-1 said that they can take Poonam with them and when money is sent, she can come to matrimonial home. Then Poonam returned to parental home with her parents. On 5.8.2002/6.8.2002, A-1 made a telephone call to Poonam reminding her of payment for purchasing a flat in Delhi and in lieu of saris. Due to persistent illegal demands by A-1, Poonam became tense and on 7.8.2002 at about 6.30/7.00 AM, she committed suicide in her room by consuming poison. She was taken to civil hospital in an unconscious condition where doctor declared her dead at 7.45 AM. E, F, G

8. This led to taking up of investigation on the basis of FIR No. 336 dated 07.08.2002 (EX-PN) lodged by the parents of the deceased against the appellant and her parents for H

- A commission of the offence punishable under Sections 304-B/498-B/34 IPC on the same day at about 12.50 PM at Jind Police Station. During the investigation, the police recovered one 3-pages hand written letter (Ex.PA) from Poonam's bedroom. On 7.8.2002, Dr. Satija (P.W.10) conducted post mortem and found no injury on the body of the deceased. During examination, stomach and its contents were sent for chemical examination. A piece of small intestine, a piece of large intestine, a piece of liver, spleen and kidney with their contents were also sent for chemical examination. The report of the chemical examiner (Ex-PT) revealed that Poonam consumed poison (aluminum phosphide), which caused her death.

9. This event led to arrest of the appellant (A-1) and her family members (A-2 to A-5) followed by recovery of dowry articles from the house of the appellant by the police and then filing of challan against him and his parents for the offences punishable under Sections 304-B and 498-B of the IPC to which they did not plead guilty and claimed trial. The prosecution examined 17 witnesses to prove the charges in relation to the offences against the accused persons whereas the defence examined 19 witnesses.

10. The Additional Sessions Judge, Jind, by judgment dated 31.01.2004 and sentence dated 04.02.2004, convicted A-1 to A-5 for the offences punishable under Section 304-B and 498-A IPC and imposed sentenced on them as under :

S.No.	Name of convict	Under Section	Sentence awarded
1.	Hari Om	304-B IPC	Life imprisonment and to pay a fine of Rs.5000/-
	Ram Chander	498-A IPC	Two years rigorous imprisonment and to pay a fine of Rs.1000/-.

2.	Ram Chnander son of Dawarka	304-B IPC	Rigorous imprisonment for ten years and to pay fine of Rs.5000/-.	A
		498-A	Rigorous imprisonment for two years and to pay fine of Rs.1000/-.	B
3.	Chander Kalan wife of Ram Chander	304-B IPC	Rigorous imprisonment for ten years and to pay fine of Rs.5000/-.	C
		498-A	Rigorous imprisonment for two years and to pay fine of Rs.1000/-.	C
4.	Subhash son of Ram Chander	304-B IPC	Rigorous imprisonment for seven years and to pay fine of Rs.5000/-.	D
		498-A	Rigorous imprisonment for two years and to pay fine of Rs.1000/-.	D
5.	Dharam Pal Son of Dawarka Dass	304-B IPC	Rigorous imprisonment for seven years and to pay fine of Rs.5000/-.	E
		498-A	Rigorous imprisonment for two years and to pay fine of Rs.1000/-.	F

11. Feeling aggrieved, all five accused (A-1 to A-5) filed criminal appeals before the High Court out of which this appeal arises. The High Court, by impugned judgment, dismissed the appeal in respect of the appellant (A-1) and upheld the conviction and sentences awarded to A-1 and allowed the appeal in respect of A-2 to A-5, namely, Subhash, Dharam Pal, Ram Chander and Chander Kalan and acquitted them of the charges framed against them.

A 12. Feeling aggrieved by the order of the High Court, A-1 has filed this appeal by way of SLP against the impugned judgment.

B 13. Mr. Shekhar Nahapde, learned senior counsel appearing for the appellant (A-1) confined his submission only to one ground. He expressly gave up his challenge to concurrent finding of the courts below so far as the conviction of the appellant under Section 304-B read with Section 498-A is concerned. In other words, learned senior counsel accepted the finding of conviction on merits, apparently, finding no merit therein and challenged the quantum of punishment (life imprisonment) awarded to the appellant.

D 14. According to learned senior counsel, having regard to all circumstances, which resulted in appellant's conviction and further keeping in view the fact that the appellant has already undergone 9 years of imprisonment till date and still continues to remain in jail, this Court should alter the award of life sentence to that of the one already undergone by the appellant. Learned senior counsel urged that though Section 304-B(2) prescribes award of imprisonment for a term, which shall not be less than seven years but which may extend for life, yet according to him, this is not a case where the courts should have awarded life sentence to the appellant. Learned counsel urged that any term more than seven years would meet the ends of justice and since in this case, 9 years of imprisonment has already been undergone by the appellant, this Court should allow the appeal to this extent and by modifying the impugned judgment in so far as the quantum of sentence is concerned, reduce the same from life imprisonment to that of 9 years.

G 15. Learned counsel for the State and the complainant while countering the submission made by the learned senior counsel for the appellant, submitted that having regard to the totality of circumstances emerging from the evidence and the fact that young girl ended her life in dramatic condition within H few days of her marriage, the award of sentence of life

imprisonment to the appellant is fully justified and hence, this Court should not interfere in quantum of sentence. A

16. Having heard learned counsel for the parties and on perusal of entire record of the case, we are inclined to allow the appeal in part finding some force in the submission urged by learned senior counsel for the appellant. B

17. Though the appellant did not make any attempt to assail the finding of his conviction on merits, yet with a view to satisfy ourselves as to whether the concurrent findings of the courts below on conviction are legally sustainable or not, we perused the record and specially the evidence. Having so perused, we are satisfied that no case is made out to interfere in concurrent findings of the courts below on merits for the following reasons. C

18. Firstly, Poonam committed suicide and died within one month of her marriage. This event attracted rigor of Section 304-B read with Section 498-A IPC and Section 113-B of the Evidence Act, 1872. Secondly, her death was due to persistent illegal demands of dowry made by the appellant one after the other to Poonam and to her parents. Thirdly, the death of Poonam had a direct nexus with demand of dowry duly proved by evidence and Poonam's suicide note (EX-PA) mentioning therein the reasons, which compelled her to end her life. Fourthly, the suicide note was duly proved to be in the handwriting of the deceased; fifthly, defence witnesses were not able to demolish or weaken the prosecution case on any of these material issues and lastly, in the light of these established facts, a clear case under Section 304-B read with Section 498-B of IPC and Section 113-B of the Evidence Act for drawing presumption as to dowry death under Section 304-B was made out against the appellant. D E F G

19. We, therefore, on our part uphold the finding of conviction and hold that the courts below were justified in holding the appellant(A-1) to be guilty of committing offences H

- A punishable under Section 304-B read with Section 498-B IPC, which caused death of Poonam.

B 20. Now, the question arises as to whether we should reduce the appellant's sentence and if so, to what extent, as urged by the learned senior counsel for the appellant.

- C 21. This issue has been the subject matter of debate before this Court in several cases, which arose out of Section 304-B read with Section 498-B and wherein this Court while interpreting the expression "may" occurring in Section 304-B IPC held that it is not mandatory for the Court in every case to award life imprisonment to the accused once he is found guilty of offence under Section 304-B. It was held that the Court could award sentence in exercise of its discretion between seven years to life imprisonment depending upon the facts of each case. It was held that in no case it could be less than seven years and that extreme punishment of life term should be awarded in "*rare cases*" but not in every case.

- E 22. In the case of **Hem Chand Vs. State of Haryana**, (1994) 6 SCC 727, the courts below had awarded life term to the accused under Section 304-B read with Section 498-A but this Court reduced it to 10 years. This was also a case where the accused was a police officer who had suffered life imprisonment. This Court held as under:

- F "7..... the accused-appellant was a police employee and instead of checking the crime, he himself indulged therein and precipitated in it and that bride-killing cases are on the increase and therefore a serious view has to be taken. As mentioned above, Section 304-B IPC only raises presumption and lays down that minimum sentence should be seven years but it may extend to imprisonment for life. Therefore awarding extreme punishment of imprisonment for life should be in rare cases and not in every case.

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8. Hence, we are of the view that a sentence of 10 years' RI would meet the ends of justice. We, accordingly while confirming the conviction of the appellant under Section 304-B IPC, reduce the sentence of imprisonment for life to 10 years' RI.

23. Similarly this Court in **State of Karnataka Vs. M.V. Manjunathgowda and Anr.**, (2003) 2 SCC 188, while convicting the accused under Section 304-B awarded 10 years imprisonment in somewhat similar facts.

24. Recently in **G.V. Siddaramesh Vs. State of Karnataka**, (2010) 3 SCC 152, this Court while allowing the appeal filed by the accused only on the question of sentence altered the sentence from life term to 10 years on more or less similar facts. Hon'ble H. L. Dattu, J. (as His Lordship then was) speaking for the Bench held as under:

"31. In conclusion, we are satisfied that in the facts and circumstances of the case, the appellant was rightly convicted under Section 304-B IPC. However, his sentence of life imprisonment imposed by the courts below appears to us to be excessive. The appellant is a young man and has already undergone 6 years of imprisonment after being convicted by the Additional Sessions Judge and the High Court. We are of the view, in the facts and circumstances of the case, that a sentence of 10 years' rigorous imprisonment would meet the ends of justice. We, accordingly while confirming the conviction of the appellant under Section 304-B IPC, reduce the sentence of imprisonment for life to 10 years' rigorous imprisonment. The other conviction and sentence passed against the appellant are confirmed."

25. Applying the principle of law laid down in the aforementioned cases and having regard to the totality of facts and circumstances of this case, we are of the considered opinion that the ends of justice would meet, if we reduce the

- A sentence of the appellant from life imprisonment to that of 10 years. In our view, this case does not fall in the category of a “rare case” as envisaged by this Court so as to award to the appellant the life imprisonment. That apart, we also notice that while awarding life imprisonment, the courts below did not assign any reasons.

26. Learned counsel for the State and the complainant were not able to cite any authority in support of their submission except to oppose the prayer made by the appellant. Therefore, we are not impressed by their submission.

27. In the light of foregoing discussion, the appeal succeeds and is allowed in part. The conviction of the appellant-Hari Om (A-1) under Sections 304-B read with Section 498-A IPC is upheld. However, the sentence (life imprisonment) awarded to the appellant is altered and accordingly, is reduced to 10 years’ rigorous imprisonment. To this extent, the impugned judgment stands modified.

Rajendra Prasad

Appeal partly allowed.