

JAGDISH & ORS.

v.

STATE OF UTTARANCHAL  
(Criminal Appeal No. 1097 of 2012)

NOVEMBER 25, 2014

[T.S. THAKUR, ADARSH KUMAR GOEL AND  
R. BANUMATHI, JJ.]

*Penal Code, 1860: ss. 498A, 304B; Dowry Prohibition Act – ss. 3 and 4 – Dowry death – Death by burn injuries – Within 7 years of marriage – Persistent demand of motorcycle and cash by husband and family members – A year prior to death, in a panchayat, compromise deed also executed wherein accused-in-laws undertook to not harass victim-deceased in future – Deceased burnt to death – Haste cremation without waiting for family of the deceased – Courts below held all the accused guilty – Husband and parents-in-law died and case against them abated – Appeal by father-in-law's brother and by brother-in-law and his wife – Held: The brother of the father-in-law of the deceased was not staying in matrimonial home of the deceased – There was no material to show that there was persistent demand by him – Mere demand of dowry at one or two instances would not attract s.304-B – He is liable to conviction u/s.498A but not u/s.304-B – As regard the brother-in-law and his wife, they were staying in the same house – Courts below convicted them u/s.304-B and there was no infirmity in the concurrent findings recorded by courts below – Their conviction u/ss.498-A and s.304-B upheld – Evidence Act, 1872 – s.113B.*

**Partly allowing the appeal, the Court**

**HELD: 1. As per the evidence of PW-1-the father of the deceased sometime after the marriage, the husband 'C' and his family members started demanding**

A motorcycle and dowry and harassed the deceased. The demand of dowry and harassment was communicated by the deceased to her father. PW-1 twice went with his relatives to the house of 'C' and informed them about his poor resources and that he would not be able to give motorcycle. In 1993, the deceased was physically beaten and she was taken to the hospital. The demand for motorcycle and Rs. 20,000/- continued and in 1994, PW-1 lodged a complaint against all the accused alleging demand of dowry. In 1994, a *Panchayat* was convened and Ex A-3 compromise deed was executed and all the accused signed in the same. In spite of Ex A-3, the cruelty and harassment for dowry demand continued. PW-2, resident of Village Beherki and a neighbour of PW-1 corroborated the version of PW-1 in all the essential particulars as to demand of motorcycle and dowry. There was nothing in cross-examination of PWs 1 and 2 to hold that they were not reliable witnesses, there is no reason to disbelieve them. [Paras 10 to 12] [198-D-F-H; 199-B, C, F-H]

E 2. In his statement under Section 313 Cr.P.C, 'C' stated that on 12.5.1995 smoke was coming out from the room where firewood was kept and the door was closed from inside, roof was cut, entered inside the room and they opened the door and that the death of the deceased was either an accident or suicide. The theory of accident put forth by the defence completely fell through on careful analysis of the evidence and the attendant circumstances. Had it been an accident or in the manner as alleged by the defence, the accused would not have hurried with cremation without informing PW-1 about the death of the deceased or to the police. As rightly pointed out by the courts below, conducting cremation hurriedly and burning the dead body of the deceased without informing PW-1 and his relatives is a strong militating circumstance against the accused. It came on evidence

that the distance between Beherki and Churiyala was about 20-25 kms. As pointed out by the courts below, the pyre was lit even before the father and relatives of the victim arrived. Trial court as well as the High Court upon appreciation of oral and documentary evidence accepted the version of the prosecution that the deceased was harassed and subjected to cruelty in connection with non-fulfillment of demand of dowry made by the husband and in-laws. [Paras 13, 14] [200-C-H]

3. Appellant-J is *Taya* i.e. elder brother of father-in-law of the deceased. Going by the evidence of PWs 1 and 2, appellant-J along with other accused also demanded dowry. A mere demand of dowry at one or two instances may not attract the provisions of Section 304B IPC though such demand might be an offence punishable under Section 498A IPC. There was no material to show that there was persistent demand of dowry by appellant-J. In his statement under Section 313 Cr.P.C., first appellant-J has stated that he has no wife or child and that he was living separately in Village Churiyala and even prior to the marriage of 'C'. There was no reason to disbelieve the statement of the first appellant-J. Insofar as signature of first appellant-J in Ex A-3 compromise deed was concerned, being elder member of the family and to ensure peaceful married life of 'C', he perhaps might have signed in the compromise deed. Appellant-J stated to be living separately could not have persistently subjected the deceased to dowry harassment and cruelty and he is to be acquitted of the charge of 304B IPC. For the alleged demand of dowry by the first appellant as spoken by PWs 1 and 2, he is liable to be convicted under Section 498A IPC. [Paras 15 and 16] [201-A-G]

4. Appellants 2 and 3 (*Y-jeth* and *S-jethani*), during their questioning under Section 313 Cr.P.C. though they have stated that they were living separately they did not produce any ration card or other document to show that

- A they were living separately. In his statement, appellant—J had stated that his brother was living with his wife and children thereby indicating that the second and third appellants were living with deceased's father-in-law as a joint family. Upon proper appreciation of evidence, the
- B courts below convicted appellants 2 and 3 under Section 304B IPC and there was no infirmity in the concurrent findings recorded by the Courts below. As regards sentencing, it was stated that appellants 2 and 3 are having a physically handicapped child and they are also
- C taking care of the son of deceased. Considering the passage of time and the facts and circumstances of the case, extreme penalty of life imprisonment is not justified and ends of justice would be met by reducing the sentence of imprisonment awarded against appellants 2 and 3 to seven years rigorous imprisonment. [Paras 17, 18] [202-A-E]
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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1097 of 2012.

- E From the Judgment & Order dated 29.12.2011 of the High Court of Uttarakhand at Nainital in Criminal Appeal No. 215 of 2002.

- F V. Giri, Gaurav Kerjriwal, Keshav Mohan, Amrita Narain, Aarti Upadhyia for the Appellants.

Pankaj Bhatia, Rachana Srivasatava for the Respondent.

The Judgment of the Court was delivered by

- G **R. BANUMATHI, J.** 1. This appeal arises out of judgment dated 29.12.2011 passed by High Court of Uttarakhand in Criminal Appeal No.215/2002, in and by which, the High Court confirmed the conviction of the appellants under Sections 304B, 498A and 201 IPC and the sentence of life imprisonment imposed on each of them.
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2. Briefly stated, case of the prosecution is that marriage between complainant—Meharchand's daughter Seema (deceased) and accused- Late Chandrahas was solemnized in the month of May 1991. As per his capacity and status, PW-1-complainant gave sufficient dowry and articles. But within few days of marriage, Chandrahas alongwith his parents and relatives, started harassing Seema on account of non-fulfillment of demand of dowry. PW-1- father of the deceased, having poor resources, was unable to meet these ever increasing demands. PW-1, repeatedly requested Chandrahas and his family members not to harass his daughter, but they remained firm in their demands of motorcycle and dowry amount. PW-1 could collect only meagre amount of Rs.2,000/- and gave it to the family of Chandrahas and requested them not to ill-treat his daughter.

3. Thereafter, in August 1994, the deceased after being severely beaten, was ousted from her matrimonial home and she was told that she should only return with Rs.20,000/- cash and a Hero Honda motorcycle and Seema came to her father's house. On seeing her condition, PW-1 took the deceased to Saharanpur District Hospital, where she was medically examined and treated for her injuries. On 4.9.1994, with the intervention of the Panchayat and assurances on the part of Chandrahas (husband) and his family, the parties arrived at a settlement and it was decided that Seema was to be taken back to her matrimonial house and that they will not torture Seema. Based on the settlement and the assurance thereon, PW-1 left Seema in her matrimonial house. However, after one month, the deceased again wrote a letter to her father describing the harassment meted out to her. PW-1 was unable to visit his daughter immediately on account of the then ongoing work of crop cutting. On 12.5.1995, Subhash Chandra (PW-4) came to the house of PW-1—Meharchand and informed him that Seema had been killed by her in-laws and burnt to death. Hearing this, PW-1—Meharchand alongwith some villagers went to Churiyala—Chandrahas's village; but there was none at the

A house. On being informed of the incident by the villagers, PW-1 reached the cremation ground and found the pyre still burning.

B 4. PW-1—Meharchand lodged a complaint at Police Station Bhagwanpur, Village Churiyala, District Haridwar, on the basis of which FIR No. 42/95 for the offences under Sections 498A, 304B IPC and Sections 3 and 4 of the Dowry Prohibition Act was registered against all the persons namely Chandrahas—Husband, Sukhbir—father-in-law, Jagdish—elder brother of Sukhbir, Yogendra (jeth)—elder brother of Chandrahas, Chandraprakash—Dewar (brother-in-law), Pushpa—mother-in-law and Savita (Jethani)—wife of Yogendra. After due investigation, chargesheet was filed against all of them.

D 5. To bring home the guilt of the accused, prosecution has examined eight witnesses and exhibited documents and material objects. Sessions Court found all the accused persons guilty under Sections 304B, 498A and 201 IPC and sentenced each of the accused to undergo life imprisonment under Section 304B, two years rigorous imprisonment under Section 498A and two years rigorous imprisonment under Section 201 IPC. Being aggrieved, appellants Jagdish—elder brother of Sukhbir, Yogendra—elder brother of Chandrahas, and Savita—wife of Yogendra filed an appeal before the High Court of Uttarakhand. Husband of the deceased—Chandrahas and his parents, namely, Sukhbir and Pushpa have all passed away and the case against them abated. High Court confirmed the conviction and sentence imposed on the accused-appellants and dismissed the appeal. This appeal assails the correctness of the judgment of the High Court affirming appellants' conviction and the sentence of imprisonment imposed on them.

G 6. Mr. V. Giri learned Senior Counsel for the appellants contended that to raise presumption under Section 113B of the Evidence Act, prosecution has to prove that there was demand of dowry and that cruelty and harassment was meted out to the deceased 'soon before her death'. It was submitted that none

of the witnesses deposed about the involvement of the appellants and there is no reliable evidence to establish the essential ingredients of Section 304B IPC or to justify invoking presumption under Section 113B of the Evidence Act. It was contended that the appellants are living separately and they were only witnesses to the compromise Ex A-3 and are in no way connected with the day to day family life of Seema and Chandrahas and the courts below erred in convicting the appellants under Sections 304B, 498A and 201 IPC.

7. Mr. Pankaj Bhatia, learned Counsel for the respondent submitted that the prosecution has adduced overwhelming evidence to prove that Seema was subjected to harassment and cruelty 'soon before her death' and upon appreciation of evidence, courts below by concurrent findings rightly convicted the appellants and the impugned judgment does not suffer from any infirmity.

8. We have carefully considered the submissions and gone through the impugned judgment and the evidence and materials on record.

9. Where the death of a woman caused by burns or bodily injuries occurs otherwise than under normal circumstances within seven years of her marriage and evidence reveals that 'soon before her death' she was subjected to cruelty or harassment by her husband or any of his relatives for or in connection with any demand for dowry, such death is described as 'dowry death' under Section 304B IPC for which the punishment extends to imprisonment for life but not less than imprisonment for seven years. By virtue of Section 113B of the Evidence Act, the Court has to raise a presumption of 'dowry death' if the same has taken place within seven years of marriage and there is evidence of the woman having been subjected to cruelty and/or harassment. It must be remembered that cruelty and harassment on a married woman and demand of dowry are generally committed within the four walls of

- A residential houses and in secrecy, thereby making it difficult to get direct evidence. That is why the legislature by introducing Section 113B in the Evidence Act tried to strengthen the prosecution case by enabling the Court to raise the presumption if certain basic facts are established and that
- B death has taken place within seven years of marriage. Considering the scope of Section 304B IPC and presumption under Section 113B of the Evidence Act, due weightage is to be given to the evidence of the father, brother, sister and other relatives of the deceased with regard to the case put forth
- C relating to demand of dowry.

10. In the instant case, deceased Seema was married to Chandrahas in the month of May 1991. From the said wedlock, a male child was born in 1993. Seema died in the month of May 1995. PW-1-the father of the deceased, Meharchand, at the time of his daughter's marriage had given the dowry and other articles as per his capacity and status. As per the evidence of PW-1 sometime after the marriage, Chandrahas and his family members started demanding motorcycle and dowry and harassed Seema. The demand of dowry and harassment was communicated by Seema to her father. PW-1, Meharchand had taken his relatives to the house of Chandrahas and informed them about his poor resources and that he will not be able to give motorcycle. After that,
- D complainant-PW-1 received a letter from his daughter Seema to bring money or otherwise her husband and in-laws would kill her. Again PW-1 Meharchand took his relatives to the Village Churiyala and requested Chandrahas and his family members not to harass his daughter. In his evidence PW-1 stated that the accused Jagdish, Yogendra and Savita demanded motorcycle and persisted in their demands. PW-1 could only arrange Rs.2,000/- and requested Chandrahas and other accused not to harass Seema; but it was of no avail. In 1993, Seema was physically beaten and she was taken to the District Hospital Saharanpur. PW-6-Dr. R.K. Verma had noticed three
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- H injuries on the body of Seema viz., on the left side of head, on



back of the chest lower part and complain of pain on front of chest of abdomen and issued Wound Certificate Ex A-8. PW-6—Dr. R.K. Verma opined that the injuries could have been caused by blunt object.

11. The demand for motorcycle and Rs. 20,000/- continued and in 1994, PW-1 lodged a complaint against all the accused alleging demand of dowry and that Seema was subjected to cruelty. In 1994, a *Panchayat* was convened in Churiyala Village and Ex A-3 compromise deed was executed and all the accused signed in the same. Ex A-3, compromise deed refers to complaint lodged by PW-1-Meharchand for beating, torturing and harassing Seema regarding dowry demand and issuance of notice by family of Chandrahas against Meharchand. As per the terms of the compromise, Chandrahas and his family has to deposit Rs.50,000/- in the name of Seema as security amount and after so depositing the amount in her name, accused can take back Seema and all the accused agreed and had undertaken that Seema would not be harassed or tortured. The appellants and all the accused have signed Ex A-3, compromise deed. In terms of Ex A-3, Rs.50,000/- was to be deposited in the name of Seema and after depositing the same, she was taken back to the matrimonial house. Ex A-3, compromise deed dated 4.9.1994 is a material evidence substantiating prosecution case. In spite of Ex A-3, compromise deed and the assurance, the cruelty and harassment for dowry demand continued.

12. PW-2 Rikhiram, resident of Village Beherki and a neighbour of PW-1 corroborated the version of PW-1 in all the essential particulars as to demand of motorcycle and dowry. PW-2 stated about demand of dowry by the accused and the letter written by Seema alleging cruelty by the accused and also about the convening of *Panchayat* and Ex A-3—compromise deed. There is nothing in cross-examination of PWs 1 and 2 to hold that they are not reliable witnesses, there is no reason to disbelieve them.

A 13. There is overwhelming evidence that there was demand of dowry and that Seema was subjected to physical violence and cruelty. When the essential ingredient that the victim was subjected to cruelty or harassment in connection with demand for dowry 'soon before her death' is proved, B presumption under Section 113B of the Evidence Act has to be invoked. When such presumption is raised, it is for the accused to rebut the presumption by adducing cogent evidence. In his statement under Section 313 Cr.P.C, late C Chandrahas (husband of the deceased) stated that on 12.5.1995 smoke was coming out from the room where firewood was kept and the door had been closed from inside, roof was cut, entered inside the room and they opened the door and that the death of Seema was either an accident or suicide. D The theory of accident put forth by the defence completely falls through on careful analysis of the evidence and the attendant circumstances. Had it been an accident or in the manner as alleged by the defence, the accused would not have hurried with cremation without informing PW-1—Meharchand about the death of Seema or to the police? There was no reason for the E accused to hurriedly conduct the cremation without even waiting for the victim's father and furthermore without lodging a complaint.

F 14. As rightly pointed out by the courts below, conducting cremation hurriedly and burning the dead body of Seema without informing PW-1—Meharchand and his relatives is a strong militating circumstance against the accused. It has come on evidence that the distance between Beherki and Churiyala is about 20-25 kms. As pointed out by the courts below, the G pyre was lit even before the father and relatives of the victim arrived. Trial court as well as the High Court upon appreciation of oral and documentary evidence accepted the version of the prosecution that Seema was harassed and subjected to cruelty in connection with non-fulfillment of demand of dowry made by H the husband and in-laws.

15. First appellant-Jagdish is Taya i.e. elder brother of father-in-law of Seema. To prove the guilt of the appellant-Jagdish prosecution relied upon:- (i) the evidence of PWs 1 and 2 that Jagdish also demanded dowry; (ii) Jagdish also signed in the memo of compromise. To attract the provisions of Section 304B IPC, the deceased must have been subjected to cruelty or harassment for or in connection with dowry 'soon before her death'. Going by the evidence of PWs 1 and 2, appellant-Jagdish along with other accused also demanded dowry. A mere demand of dowry at one or two instances may not attract the provisions of Section 304B IPC though such demand might be an offence punishable under Section 498A IPC. There is no material to show that there was persistent demand of dowry by appellant-Jagdish.

16. In his statement under Section 313 Cr.P.C., first appellant-Jagdish has stated that he has no wife or child and that he is living separately in Village Churiyala and that his brother Sukhbir was living with his wife and children. First appellant has further stated that he has been living separately even prior to the marriage of Chandrahas and that he has his own food prepared. We find no reason to disbelieve the statement of the first appellant- Jagdish. Insofar as signature of first appellant-Jagdish in Ex A-3 compromise deed is concerned, being elder member of the family and to ensure peaceful married life of Chandrahas, first appellant perhaps might have signed in the compromise deed. The first appellant who is stated to be living separately could not have persistently subjected Seema to dowry harassment and cruelty and the first appellant is to be acquitted of the charge of 304B IPC. For the alleged demand of dowry by the first appellant as spoken by PWs 1 and 2, the first appellant is to be convicted under Section 498A IPC. As seen from the materials on record, first appellant-Jagdish was about 70 years of age in the year 1996. Considering his age, lenient view has to be taken in imposing the sentence for the offence under Section 498A IPC.

A 17. Insofar as appellants 2 and 3 (Yogenda-jeth and Savita-jethani), during their questioning under Section 313 Cr.P.C. though they have stated that they are living separately they have not produced any ration card or other document to show that they are living separately. In his statement, first  
 B appellant–Jagdish has stated that Sukhbir was living with his wife and children thereby indicating that the second and third appellants were living with Sukhbir as a joint family. Upon proper appreciation of evidence, the Courts below convicted appellants 2 and 3 under Section 304B IPC and we find no  
 C infirmity in the concurrent findings recorded by the Courts below.

D 18. So far as the sentence of appellants 2 and 3, it was stated that appellants 2 and 3 are having a physically handicapped child and they are also taking care of the son of deceased–Seema. Considering the passage of time and the facts and circumstances of the case, in our view, extreme  
 E penalty of life imprisonment is not justified and ends of justice would be met by reducing the sentence of imprisonment awarded against appellants 2 and 3 to seven years rigorous imprisonment.

F 19. In the result, conviction of first appellant–Jagdish under Section 304B IPC is set aside and he is convicted under Section 498A IPC and is sentenced to the period already  
 G undergone by him. While maintaining the conviction of appellants 2 and 3 (Yogendra & Savita) under Section 304B IPC, sentence of life imprisonment awarded to them is reduced to seven years rigorous imprisonment. The appeal is partly allowed to the extent indicated above. Bail bonds executed by  
 H first appellant–Jagdish stand discharged. Appellants Yogendra and Savita be taken into custody forthwith for serving out the remaining sentence awarded to them.

Devika Gujral

Appeal partly allowed.