Sham Lal vs State Of Haryana Etc on 20 February, 1997

Equivalent citations: AIR 1997 SUPREME COURT 1873, 1997 AIR SCW 1614, (1997) 1 CURCRIR 231, (1997) MATLR 186, (1997) 1 CRICJ 398, (1997) 2 ALLCRILR 393, (1997) 3 SCJ 4, (1997) 2 SCALE 328, (1997) 34 ALLCRIC 657, (1997) 1 CHANDCRIC 123, 1997 CHANDLR(CIV&CRI) 383, 1997 CRILR(SC MAH GUJ) 291, 1997 APLJ(CRI) 290, (1997) 3 RECCRIR 85, (1997) MARRILJ 485, (1997) 3 JT 91 (SC), 1997 SCC (CRI) 759, 1997 CRI. L. J. 1927, (1997) 2 SCR 309 (SC), (1997) SC CR R 678, 1997 (9) SCC 759, (1997) 2 SUPREME 614, 1997 CALCRILR 101, 1997 CRILR(SC&MP) 291, (1997) 1 CRIMES 245

Bench: Madan Mohan Punchhi, K.T. Thomas

CASE NO.:
Appeal (crl.) 559 of 1990

PETITIONER:
SHAM LAL

RESPONDENT:
STATE OF HARYANA ETC.

DATE OF JUDGMENT: 20/02/1997

BENCH:
MADAN MOHAN PUNCHHI & K.T. THOMAS

JUDGMENT:

JUDGMENT ORDER 1997(2) SCR 309 The following Order of the Court was delivered :

Neelam Rani,wife of the appellant, died of burns on 17.6.1987. Her husband, the present appellant, and his father and grand-mother were arrayed as accused before the Sessions Court in connection with the death of Neelam Rani charging them with offences under Section 302, 304B and 498A of the IPC. The Sessions Court acquitted the grand-mother, who was in her eighties, but convicted the appellant as well as his father of all offences and sentenced them to imprisonment for life. The High Court of Punjab and Haryana on the joint appeal by those convicted persons acquitted appellant's father but confirmed the conviction of the appellant under Section 302 IPC. The High Court pointed out that in view of the said conviction it was unnecessary to maintain the conviction under the Other two offences. Appellant filed this appeal by special leave in challenge of the said conviction and sentence.

There seems to be no dispute on the fact that Neelam Rani died of burns on

17.6.1987. The prosecution case in brief is that appellant was persecuting her with the demand for more dowry and at last set her ablaze for not quenching his greed for dowry. On the other hand the stand of the appellant, when questioned under Section 313 of the Code of Criminal Procedure, was that by frustration, as she could not give birth to a child and as she could not adjust in the village life with the appellant, she committed suicide by burning herself.

The High Court counted some circumstances, in the absence of any eye- witness, and reached the conclusion that the circumstances have con- Catenated themselves into a complete chain establishing that appellant had killed her-by setting her ablaze after dousing her with kerosene, On a scrutiny of the evidence we are of the view that the circumstances are far too meagre for reaching the conclusion that appellant had set her on fire.

When Neelam Rani's father-Bhagwan Dass (PW-3) on hearing about the precarious condition of his daughter rushed to see her at the Civil Hospital, Kaithal, all that he could see was her charred body. When he saw the appellant standing nearby he asked him whether she was killed by him, to which appellant answered with folded hands that it was a mistake on his part for that he should be forgiven.

The above circumstance was taken seriously by the High Court as an incriminating conduct of the appellant. Along with it High Court counted the evidence of Zile Singh (PW-5). But that witness did not stick to the version assigned to him by the prosecution, and hence he was treated as hostile. He was to speak to the words he heard from the deceased as soon as he reached the scene of occurrence. He was confronted with a letter which he had sent to PW-6 in which he promised that he would never revert from what he has already committed to the police. But PW-5 in his testimony in court said that he could not hear anything which deceased had muttered as it was too inaudible. The testimony of PW-5 is therefore of no use to the prosecution except to the extent he saw Neelam Rani in flames and the inmates of the house remaining aghast.

We are unable to agree with the finding reached by the High Court that on the said circumstance Neelam Rani was murdered by the appellant.

But it is a certainty that Neelam Rani died under abnormal circumstances; If it is not a case of homicide, it could be a case of suicide because her death by accident could reasonably be ruled out from all the broad circumstances in this case. We have now therefore to consider whether appellant can be fastened with the penal liability under Section 304-B of the IPC.

The primary requirements for finding the appellant guilty of the offence under Section 304-B IPC are that death of the deceased was caused by burns within seven years of her marriage and that "soon before her death" she was subjected to cruelty or harassment by the appellant for or in connection with any demand for dowry.

The first premise stands established in this case that the death of Neelam Rani took place within seven years of her marriage though the precise:date of her marriage is not in evidence. (It is

admitted by both sides that her marriage was in the year 1983). The second premise that death was caused by burns is a factum which has not been disputed even by the appellant himself. In order to establish the third ingredient that "soon before her death she was subjected to cruelty or harassment for or in connection with demand for dowry", a plea is made to resort to the legal presumption envisaged in Section 113-B of the Evidence Act. It 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."

It is imperative, for invoking the aforesaid legal presumption, to prove that "soon before her death" she was subjected to such cruelty or harassment. Here, what the prosecution achieved in proving at the most was that there was persisting dispute between the two sides regarding the dowry paid or to be paid, both in kind and in cash, and on account of the failure to meet the demand for dowry, Neelam Rani was taken by her parents to their house about one and a half years before her death. Further evidence is that an attempt was made to patch up between the two sides for which a panchayat was held in which it was resolved that she would go back to the nuptial home pursuant to which she was taken by the husband to his house. This happened about ten to fifteen days prior to the occurrence in this case. There is nothing on record to show that she was either treated with cruelty Or harassed with the demand for dowry during the period between her having been taken to the parental home and her tragic end;

In the absence of any such evidence it is not permissible to take recourse to the legal presumption envisaged in Section 113-B of the Evidence Act. That rule of evidence is prescribed in law to obviate the prosecution of the difficulty to further prove that the offence was perpetrated by the husband, as then it would be the burden of the accused to rebut the presumption.

The corollary of the aforesaid finding is that appellant cannot be convicted of the offence under section 304-B IPC. But this would not save him from the offence under Section 498-A of the IPC for which there is overwhelming evidence, particularly of PW-3, Bhagwan Dass, who heard from his daughter, which evidence is admissible under Section 32 of the Evidence Act, besides his own direct dialogue with the appellant and his father. As the trial court and the High Court found his evidence reliable, we hold that prosecution has succeeded in proving the offence under Section 498-A of IPC.

We therefore set aside the conviction and sentence passed on the appellant under Section 302 of IPC. But we find him guilty of the offence under Section 498-A of the IPC and convict him thereunder and sentence him to the maximum period of imprisonment prescribed thereunder i.e., rigorous imprisonment for three years. It is needless to say that if the appellant has already completed that period in jail in connection with this case it is not necessary that he should surrender to custody. The appeal is accordingly disposed of. Consequently the other appeal is dismissed.