

STATE OF HARYANA

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v.

ANGOORI DEVI & ANR.

(Criminal Appeal No.1801 of 2013)

JUNE 13, 2019

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**[INDIRA BANERJEE AND AJAY RASTOGI, JJ.]**

*Penal Code, 1860: s. 498-A r/w 304B – Dowry death – Death of victim due to burn injuries within 7 years of marriage, otherwise than under normal circumstances – Conviction u/s. 498A r/w 304B – However, set aside by the High Court – Interference with – Held: Not called for – High Court rightly found that the evidence of the complainant-father of the victim did not show any proximate connection between the demand of dowry and the act of cruelty or harassment and or the death – Prosecution was unable to prove that the victim was subjected to cruelty or harassment soon before her death in connection with any demand for dowry – Thus, the evidence being weak, was not sufficient to convict the respondents.*

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**Dismissing the appeal, the Court**

**HELD:** Considering the evidence, the High Court did not find the evidence strong enough to hold the respondents guilty. To attract Section 304B of the Penal Code, the prosecution has to establish that soon before the death the deceased was subjected to cruelty and harassment in connection with demand for dowry. The High Court rightly found that the evidence did not show any proximate connection between the demand of dowry and the act of cruelty or harassment and or the death. The prosecution has not been able to prove that the victim was subjected to cruelty or harassment soon before her death in connection with any demand for dowry. Under Section 304B, the prosecution cannot escape from discharging its burden of proving that the harassment or cruelty was related to demand for dowry soon before death. The High Court has been swayed by the fact that the evidence of the complainant-father of the victim, did not evince direct knowledge of demand of dowry. The judgment and order under appeal is not liable to be interfered with. [Para 15-17] [1044-F-H; 1045-A-B]

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A           CRIMINAL APPELLATE JURISDICTION: Criminal Appeal  
No.1801 of 2013

From the Judgment and Order dated 03.05.2012 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No.984-SB of 1998

B           Dr. Monika Gusain, Adv. for the Appellant.

Sudhir Naagar, Adv. for the Respondents.

The Judgment of the Court was delivered by

**INDIRA BANERJEE, J.**

- C           1. This appeal filed by the State of Haryana is against a judgment and order dated 3.5.2012 passed by a Division Bench of the High Court of Punjab and Haryana at Chandigarh allowing the appeal filed by the respondents, reversing the judgment of conviction passed by the learned Additional Sessions Judge, Jhajjar convicting the respondents under
- D           Sections 498A read with Section 304B of the Indian Penal code and acquitting the respondents.

2. The victim (Babli) and her sister (Neeru) were married to two brothers, Kartar (Respondent No.3) and Pawan, sons of Smt. Angoori Devi (Respondent No.1) and Akhey Ram (Respondent No.2). After 3

- E           ½ years of marriage the victim, wife of Kartar Singh (Respondent No.3) died of burn injuries.

3. The victim's father (hereinafter referred to as the 'complainant') lodged an FIR, pursuant to which Sessions Crime No. 9 of 29.3.1996 was commenced. It was alleged that about 1 & ¼ years ago when his

- F           daughter Babli was pregnant, her in-laws had asked her to leave the house and return only if she brought Rs.60,000/-.

4. It is alleged that the victim informed her parents about this demand and she started living with her parents. She gave birth to a daughter, after which she stayed with her parents for 5 to 6 months.

- G           Thereafter, the complainant requested the accused to take the victim back. It is stated that the victim has lived with her in-laws for about 20 days, after which she was thrown out from her matrimonial home. Her mother-in-law (Respondent No. 1) and father-in-law (Respondent No. 2) demanded gold ring and a chain. It is stated that a village Panchayat was convened after which Babli was sent to her in-laws house on

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29.10.1995. On 3.12.1995, the complainant came to know about the death of the victim. He came to know that the victim had been burnt to death. He went to the spot and saw the dead body.

5. According to the complaint, since the victim had died due to torture and beating by her in-laws to press their demand for dowry, the matter was reported to the Sadar Police Station, Bahadurgarh. Investigation was commenced and the body of the victim was sent for post mortem examination. The post mortem report opined that the cause of death was shock as a result of anti-mortem superficial deep burns over entire body.

6. The prosecution examined nine witnesses. No witnesses were examined on behalf of the defence. In the examination under Section 313 of the Code of Criminal Procedure, the respondent No. 3, Kartar Singh, husband of the victim, deposed that the respondent Nos. 1 and 2, being his parents, resided separately.

7. The complainant who deposed as the 4<sup>th</sup> prosecution witness (PW4) stated that immediately after marriage the respondent started harassing the victim for dowry and also used to beat his daughter. The victim was thrown out of the house when she was in the family way as they wanted her to bring Rs.60,000/- in cash, gold articles and a Refrigerator.

8. According to the complainant, as he could not afford to give cash and ornaments, the victim was thrown out. While the victim was at his house, she gave birth to a girl child. After about six months, through the intervention of a Panchayat, he sent the victim back to her matrimonial home. No member of the Panchayat was examined.

9. The victim stayed there for 15-20 days, after which she was set on fire and killed by the accused. According to the complainant, Rakesh, elder brother of Akhey Ram (Respondent No. 3) came to his village and told him about the death of the victim. Thereafter, the complainant along with villagers went to the house of accused and saw the victim lying dead.

10. The complainant has, in his evidence, claimed that his younger daughter, Neetu told him that the victim had been killed by the accused and later set on fire after pouring kerosene oil on her body. The younger daughter Neetu was, however, not examined by the prosecution.

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- A        11. The victim's brother, Subhash who deposed as the 5<sup>th</sup> prosecution witness (PW-5) more or less reiterated what the complainant, his father, had said.
- B        12. Admittedly, there is no eye-witness to the incident. The respondent No.3 has in his statement under Section 313 stated that his parents did not live with him and that he was not at home when the incident took place.
- C        13. The High Court found that the complainant did, in his evidence, say that he had first hand knowledge of demand of dowry. The High Court refused to uphold the conviction on the basis of hearsay evidence, since the primary witness Neetu was never produced in Court to give evidence. Moreover, the High Court found discrepancies between his evidence in Court and his statement to the Police, with which he had been confronted.
- D        14. The High Court found substance in the submission made by the Counsel for the respondents that if the respondents had really harassed or maltreated the victim, her sister married to another son of the respondent Nos. 1 and 2, brother of the respondent No.3, would not have abstained from giving evidence. The Court also opined that counsel was justified in submitting that if there had been harassment as a result of greed for dowry, the victim and her sister who was married to the victim's brother-in-law (husband's brother) would also have been harassed and tortured. There is no allegation of harassment of the victim's sister Neetu.
- F        15. Considering the evidence, the Court did not find the evidence strong enough to hold the respondents guilty. We agree with the High Court that the evidence is weak, and not sufficient for conviction.
- G        16. It is true, that the victim died of burns. The death was otherwise than under normal circumstances and within 7 years of marriage. However, to attract Section 304B of the Indian Penal Code, the prosecution has to establish that soon before the death the deceased was subjected to cruelty and harassment in connection with demand for dowry. The High Court rightly found that the evidence did not show any proximate connection between the demand of dowry and the act of cruelty or harassment and or the death. The prosecution has not been able to prove that the victim was subjected to cruelty or harassment soon before her death in connection with any demand for dowry.

17. Under Section 304B of the Indian Penal Code, the prosecution cannot escape from discharging its burden of proving that the harassment or cruelty was related to demand for dowry soon before death. In this case, the High Court has been swayed by the fact that the evidence of the complainant, being the father of the victim, did not evince direct knowledge of demand of dowry. The judgment and order under appeal is not liable to be interfered with.

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18. Accordingly, the appeal is dismissed.

Nidhi Jain

Appeal dismissed.