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KASHMIRA DEVI

v.

STATE OF UTTARAKHAND & ORS.

(Criminal Appeal No. 724 of 2019)

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JANUARY 28, 2020

[R. BANUMATHI AND A. S. BOPANNA, JJ.]

- Penal Code, 1860 – ss.304-B, 498-A – Case of the prosecution is that victim (since deceased) was married to proforma respondent no.3 – Accused persons used to beat and harass the victim – Due to such ill treatment by her in-laws for dowry the victim came back to her parental house – PW1 (mother of the victim) & PW3 (father) sent her back to matrimonial house – PW1 through the news spread amongst the villagers got to know that the victim was burnt – Trial court acquitted appellant (mother-in-law) and the other accused persons – High Court convicted the appellant u/s.304-B r/w s.498-A, IPC and awarded life imprisonment – Held: From the evidence of PW1, prosecution has proved that “soon before the death”, deceased was subjected to cruelty and harassment – When prosecution has established the same and also that within seven years of marriage the victim had died an unnatural death, the presumption u/s.113-B, Evidence Act is to be raised against the appellant that she caused the dowry death – Once the prosecution is able to establish the ingredients of s.304B, IPC, it is for the accused to rebut the presumption – But the accused did not adduce any reliable evidence to rebut the presumption – Further, there were three dying declarations of the victim – Since it has come in evidence that at the time of recording the first two dying declarations, her in-laws were present, it cannot be said that the statement was recorded voluntarily and without fear – During the third dying declaration, parents of the victim had come and she gave the statement without any fear – Said statement refers to the incident and the manner in which it had occurred – Indicator to the truthfulness of such statement is that the deceased only mentioned about the appellant who indulged in the act of pouring kerosene and setting her on fire – She did not implicate her husband nor her father-in-law who was in the house – Conviction of the appellant is affirmed – However,*

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sentence of imprisonment for life is altered to rigorous imprisonment for seven years including the period of sentence already undergone by the appellant – Fine as imposed and default sentence is sustained – Evidence Act, 1872 – s.113-B.

Penal Code, 1860 – s.304-B – Conviction under – Essentials to be satisfied – Discussed.

Penal Code, 1860 – s.304-B – Quantum of sentence – Appellant convicted u/s.304-B – Awarded life imprisonment – Held: Minimum sentence provided is seven years but it may extend to imprisonment for life – In Hem Chand v. State of Haryana reported as [1994] 4 Suppl. SCR 295, Supreme Court held that while imposing the sentence, awarding extreme punishment of imprisonment for life u/s.304-B should be in rare cases and not in every case – In view of mitigating factors in present case, like appellant's age, contribution required by her to the family, while husband is also aged, and further taking into consideration all other circumstances, sentence of imprisonment for life is altered to rigorous imprisonment for seven years including the period of sentence already undergone.

Partly allowing the appeal, the Court

HELD : 1.1 From the evidence of PW-1, prosecution has proved that “soon before the death”, deceased was subjected to cruelty and harassment. When prosecution has established that deceased was subjected to dowry harassment “soon before the death” and that within seven years of marriage deceased had died an unnatural death, the presumption under Section 113-B of the Evidence Act is to be raised against the appellant that she caused the dowry death. Once the prosecution is able to establish the ingredients of Section 304B IPC, it is for the accused to rebut the presumption. But the accused have not adduced any reliable evidence to rebut the presumption. The evidence of DW-1 and DW-2 relating to the incident will not be sufficient when the incident is viewed keeping in perspective the evidence of prosecution relating to the demand for dowry preceding the actual incident. In fact, when the deceased was shifted from Kota hospital, Srinagar to Dehradun hospital, PW-1 tried to accompany them but the accused refused to take PW-1 along. Not informing about

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- A the incident and refusal of the appellant and other accused to take PW-1 along with them to the hospital, are strong circumstances against the appellant. The evidence of PW1 would disclose that when she first went to the Hospital in Srinagar, she found that the deceased was surrounded by her husband and in-laws while PW1, the mother of the deceased was not allowed to interact with her daughter. It is in that circumstance the said declarations dated 06.02.08 and 07.02.08 were recorded. Firstly, the statement dated 06.02.08 was not recorded by a Competent Authority or an Officer but is recorded by the so-called Panchayat in the manner to aid the accused. Insofar as the second dying declaration dated 07.02.08 it is no doubt true that it has been recorded after a communication being addressed to the Tehsildar and after being certified by the doctor that the deceased was mentally fit to make the declaration. Though the said requirements are satisfied, the surrounding circumstances in which the statement was recorded while she was under the control of her in-laws. Such statements relied on by the appellant would not inspire confidence in the Court. In addition, it is noticed that the same is in the form of question and answer which could also be out of context depending on the manner in which the questions were put. As noted in the evidence of PW1, the mother of the deceased, she was not allowed to accompany the deceased when she was shifted to Doon Hospital. However, she subsequently went there and was able to interact with her daughter and in that circumstance after about a week from the incident the declaration was recorded on 13.02.08 after being certified by the doctor about the deceased being conscious and fit to make the statement. The said statement refers to the incident and the manner in which it had occurred. The indicator to the truthfulness of such statement is that the deceased had only mentioned about the appellant i.e., the mother-in-law who had indulged in the act of pouring kerosene and setting her on fire. She had not implicated her husband nor her father-in-law who was in the house but has stated that her father-in-law was sitting in another room having her daughter on his lap and has in fact stated that when she started crying, her father-in-law came there and he extinguished the fire. If it was a case of false implication, there was no reason for the deceased to have been so specific insofar as the act of causing the death
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without naming the other members of the family when all of them were involved in the act of demanding dowry and was complaining earlier about the harassment meted out by them. In such circumstance, the reliance placed on the dying declaration dated 13.02.08 is justified. [Paras 19-21] [165-H; 166-A-H; 167-A-D]

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1.2 On an independent consideration, the dying declaration dated 13.02.08 is reliable. The said dying declaration was recorded by the Additional Tehsildar who was examined as PW5. He stated with regard to the memo received from the hospital and having met the medical officer he recorded the statement of the deceased who was lying with burn injuries in the emergency ward. The validity of the statement so recorded, therefore, stands established. The High Court having examined the matter threadbare has arrived at its conclusion in recording the conviction in the manner as it has done which is justified and does not call for interference. [Paras 22, 23] [167-F-G; 168-B-D]

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Nallam Veera Stayanandam & Ors. v. The Public Prosecutor, High Court of A.P. (2004) 10 SCC 769 ; Ashabai & Anr. v. State of Maharashtra (2013) 2 SCC 224 : [2013] 1 SCR 115 ; State of Karnataka v. Suvarnamma & Anr. (2015) 1 SCC 323 – referred to.

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1.3 In the instant case keeping in view the age of the appellant and also the contribution that would be required by her to the family, while husband is also aged and further taking into consideration all other circumstances, the sentence as awarded by the High Court to the appellant herein is liable to be modified. In the result the following: (i) The conviction of the appellant recorded by the High Court under Section 304-B IPC and Section 498-A IPC through its judgement dated 29.06.17 is upheld and affirmed; (ii) The sentence ordered by the High Court through its order dated 10.07.17 is modified and the sentence of imprisonment for life is altered by ordering the appellant to undergo rigorous imprisonment for a period of seven years which shall include the period of sentence already undergone by the appellant. The fine as imposed and the default sentence is sustained. [Para 25] [168-F-H; 169-A-B]

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- A *Hem Chand v. State of Haryana (1994) 6 SCC 727 : [1994] 4 Suppl. SCR 295 – relied on.*

Sanjay Kumar Jain v. State of Delhi (2011) 11 SCC 733 : [2010] 14 SCR 1135 ; Kans Raj v. State of Punjab and Others (2000) 5 SCC 207 : [2000] 3 SCR 662 ;

- B *Smt Shanti and Another v. State of Haryana (1991) 1 SCC 371 : [1990] 2 Suppl. SCR 675 – referred to.*

Case Law Reference

	[2010] 14 SCR 1135	referred to	Para 9
C	[2000] 3 SCR 662	referred to	Para 18
	[1990] 2 Suppl. SCR 675	referred to	Para 18
	(2004) 10 SCC 769	referred to	Para 22
	[2013] 1 SCR 115	referred to	Para 22
D	(2015) 1 SCC 323	referred to	Para 23
	[1994] 4 Suppl. SCR 295	relied on	Para 24

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 724 of 2019.

- E From the Judgment and Order dated 29.06.2017 of the High Court of Uttarakhand at Nainital in Government Appeal No. 42 of 2010.

Aakash Sirohi, Indra Lal, M. P. Shorawala, Advs. for the Appellant.

Dr. Rajiv Nanda, Manish Kumar Vikkey, Advs. for the Respondents.

- F The Judgment of the Court was delivered by

A. S. BOPANNA, J.

- G 1. The instant appeal has been filed by the appellant assailing the impugned judgment and final order dated 29.06.2017 and 10.07.2017, passed by the High Court of Judicature at Nainital in Government Appeal No. 42 of 2010, whereby the High Court has allowed the appeal filed by the Respondent and set aside the acquittal of appellant passed by the trial court and convicted the appellant for the charges under Sections 304-B and 498-A IPC.

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2. The case of the prosecution in brief is that the marriage between deceased/Urmila @ Guddi and Proforma Respondent No.3/Jagdish Singh was solemnized four years back. At the time of the marriage dowry was given by parents of the deceased as per their financial capacity; despite the same the husband and in-laws of the deceased were not satisfied. Whenever deceased used to visit her paternal house, she used to complain about the harassment and brutal beating by her husband, father in law, mother in law i.e. Appellant/Kashmira Devi, brother of husband and brother's wife for non-fulfilment of demands for dowry, to PW-1/ Rajeshwari/ Mother of the deceased. In November, 2007 the deceased was severely beaten and harassed by the accused persons. Due to the ill treatment of her in-laws she came back to her parental house. PW1 and her husband/PW-3 sent her back on 02.02.2008 to the matrimonial house by stating that they are very poor and in no position to fulfil the demands of the accused persons. On 08.02.2008, PW1 through the news spread amongst the villagers received information that the deceased was burnt, thereafter she called the in-laws of her daughter to inquire about the incident, when she was told by Proforma Respondent No 3 that she was burnt due to stove burst. Immediately PW1 along with all her family members reached the base hospital to see the condition of deceased and on inquiring about how her daughter was burnt, accused persons instead of giving a satisfactory answer used derogatory words and started threatening them and also told deceased to say on inquiry by anybody that she has got burnt by stove. On 14.02.2008 deceased succumbed to her injuries. On 15.02.2008, PW1/Rajeshwari/Mother of the deceased filed an application under Section 156(3) of the Cr.P.C.

3. The statement of the deceased was recorded by DW1/Darshani Devi on the first day after the incident wherein deceased stated that all of a sudden, the stove burst, oil spilled and caught fire. She had also stated that no one was responsible for the incident. On 07.02.2008, second dying declaration was recorded by the Tehsildar wherein she stated that the stove exploded and her saree caught fire. The last dying declaration was recorded by PW-5/ Shishpal Singh/ Additional Tehsildar on 13.2.2008 wherein the deceased has stated that there was quarrel between her and her mother in law/appellant and in the course of quarrel her mother-in-law set her ablaze and none of the others had any involvement.

4. FIR No.2 of 2008 was registered on 29.02.2008 against the accused persons. The investigation of the offence was taken up by PW8

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- A and later on by PW9/Devendra Singh who recovered clothes and stove from the spot. Body of the deceased was sent to the hospital for post-mortem which was conducted by PW6/ Dr. R.K. Tamta and in the post-mortem report he stated that severe burn injuries were present on approximately 55% of the body including head, face, neck, breast, left hand and right hand from front and back side. On internal examination of the body it was found that the membrane of the head was congested. In his opinion the cause of the death was septicaemia due to the ante mortem burn injuries. After completion of the investigation, charge sheet was filed under Sections 304-B and 498-A of IPC. The appellant pleaded not guilty and claimed to be tried. The prosecution examined as many as 9 witnesses to bring home the guilt of the accused and accused produced two witnesses.

- 5. Upon consideration of the evidence, the trial court acquitted appellant and the other accused persons for the charges under Section 304-B and 498-A IPC stating that the prosecution has failed to prove the case against the accused persons beyond reasonable doubt. Trial court noted that on 07.02.2008 on the application of the SHO, dying declaration of the deceased was recorded by the Tehsildar but the said dying declaration has not been proved by the prosecution. Court held that there are three dying declarations of the deceased, hence the dying declarations have become dubious. It held that at the time of the incident only the father in law and the mother in law of the deceased were at home and none of the family members were present at home. All the witnesses examined by the prosecution belong to the parents' place of the deceased, but were not present on the spot. The witness DW2/Dalveer Singh is the spot witness but he has not been examined by the prosecution and has rather been examined by the defence, who deposed that deceased caught fire from stove. So far as the question of dowry is concerned no prior complaint in this regard has ever been filed by the parents of the deceased. Regarding the FIR, court held that it has been lodged on the instruction of the husband of PW1 with much delay and only after due deliberations, on seeking legal advice. The Investigating officer has shown in the site map of the spot that the saree caught fire from the stove.
- 6. Being aggrieved by the order dated 25.02.2010, an appeal was filed by the State of Uttarakhand, whereby High Court set aside the order passed by the Trial Court and convicted appellant under Section 304-B read with Section 498-A of the IPC and sentenced her to undergo

imprisonment for life and to pay fine of Rs. 10,000 for the offence under Section 304-B and in default of payment of fine, to undergo rigorous imprisonment for six months. However, in view of the judgment in *Smt. Shanti and Anr. Vs. State of Haryana* AIR 1991 SC 1226, though appellant was convicted u/s 498-A IPC, no separate sentence was awarded in view of the fact that substantive sentence was awarded for major offence u/s 304-B IPC.

7. The High Court noted that statement of deceased was recorded firstly on 06.02.2008 wherein she deposed that all of a sudden, the stove burst, oil spilled and caught fire. She had also stated that no one was responsible for the incident. This statement was signed by members of the Gram Panchayat but they were not examined. DW-1 though examined, in her cross-examination deposed that she did not know who has written this statement on 06.02.2008/Ex. B-1. The court held that this document does not inspire confidence. The second statement was recorded on 07.02.2008 by the Tehsildar in which also she stated that the stove exploded and her saree caught fire. She put right thumb impression on the statement. The last statement was recorded on 13.02.2008 by PW-5. The death of deceased was due to burn injuries which are verified by the doctor. Court further noted that dying declaration made on 13.02.2008 is natural, voluntary and without any influence. When statements were recorded on 06.02.2008 and 07.02.2008, the accused persons were present in the room. However, on 13.02.2008, parents of the deceased were also there and she gave statement without any fear. Deceased made specific allegation against appellant which cannot be termed as tutored. Further the High Court held that in case the deceased did not die unnatural death, it was expected that in-laws would inform the parents of the deceased, which was not done in this case. As regards the delay in lodging FIR, the court opined that the foremost anxiety of the family members was to look after the deceased instead of lodging FIR. When the deceased died on 14.02.2008, immediately after that on 15.02.2008 complaint was lodged and FIR was registered. Thus, there was no inordinate delay in filing the FIR. PW-9 has deposed that the stove did not burst and the same was taken into possession. There is close proximity between demand of dowry for which deceased was harassed and tortured by her in-laws and her death. With these findings, the High Court allowed the appeal filed by the respondent and set aside the order of acquittal passed by the trial court and convicted them.

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- A 8. In appeal before us, appellant has contended that the High Court erred in ignoring that the prosecution failed to present any material to rule out the possibility of an accidental death so as to bring it within the purview of the 'Death occurring otherwise than in normal circumstances' as required under Section 304-B of IPC and further failed in establishing the fact that soon before the occurrence there was cruelty/harassment in relation to dowry demand and to bring on record any reliable evidence of a subsisting dowry demand. Further the High Court erred in ignoring the fact that the parents of the deceased never made an attempt to report that there was a demand for dowry to the police or the elders of the locality and the fact that the allegation regarding dowry was made for the first time on 15.02.2008 while the incident took place on 06.02.2008. It is also contended by the appellant that High Court erred in convicting the accused by reversing the judgment of acquittal of the appellant even though the same was based on reasonable and plausible grounds and in ignoring the evidences brought on record and the credibility of the prosecution witnesses. It is also submitted by the appellant that the High Court erred by relying on the three-dying declarations of the deceased in isolation and failed to consider the possibility that the third dying declaration of the deceased was a result of being brainwashed by her parents. It is the contention of the appellant that error was committed by the Court in bringing the case within the ambit of the Section 113-B E of the Indian Evidence Act by proceeding under the presumption arising under Section 304-A and 113-B of the Indian Evidence Act.

9. On the other hand in the counter affidavit filed by the Respondents they have submitted that the High Court properly appreciated the statement of the deceased made on 13.02.2008 wherein F the deceased supported the prosecution case and also evidence of PW5 and accordingly convicted and sentenced the appellant u/s 304-B and 498-A IPC by stating that dying declaration is acceptable even in the absence of the other corroborative evidence. It was further submitted that the High Court has applied correct position of law before convicting the appellant under Section 304-B by discussing the applicability of Section 304-A and Section 113-B of the Evidence Act relying on the judgment of *Sanjay Kumar Jain Vs State Of Delhi* (2011) 11 SCC 733 and holding that deceased died within seven years of marriage and she was subjected to cruelty and harassment by her husband and relatives for bringing insufficient dowry and further in holding that accused persons including G

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the appellant had failed to rebut the presumption under Section 113-B of the Evidence Act. It is further submitted by the Respondent that deposition of PW1, PW2 and PW3 clearly establish the fact that deceased was subjected to cruelty by her in-laws in bringing insufficient dowry and on various occasion she has told it to her parents. On the contention of the dying declaration it is submitted that the High Court had rightly held that dying declaration made on 13.02.2008 is only found to be trustworthy after assessing each dying declaration relying on the ratio of the judgment *Ashabai and Another Vs State of Maharashtra* (2013) 2 SCC 224 wherein it was held that when there are multiple dying declarations, each dying declaration has to be assessed independently on its own merits as evidentiary value and one cannot be rejected solely because of certain variations in another declaration. It was further submitted that the High Court has rightly held that the prosecution has proved its case beyond reasonable doubt on the basis of the material on record and evidence of material witnesses. Respondents have further submitted that in the present case trial court acquitted the accused persons without any cogent reason and the High Court as First Appellate Court re-appreciated and scanned the evidences and passed a well-reasoned judgment whereby the appellant has been appropriately convicted.

10. Heard Shri Aakash Sirohi, learned counsel for the appellant, Dr. Rajiv Nanda, learned counsel for the respondent State and perused the appeal papers.

11. As noticed the learned Sessions Judge by the judgement dated 25.03.2010 in Sessions Trial No.13/2008 had acquitted the appellant herein and the other co-accused of the charge alleged against them under Section 304-B and 498-A of IPC. The High Court having re-appreciated the evidence and having considered the matter in its entirety has convicted Jagdish Singh, the husband of the deceased and Govind Singh and Mahendra Singh, the father-in-law and brother-in-law of the deceased under Section 498-A IPC. The appellant Kashmira Devi, mother-in-law of the deceased is convicted under Section 304-B IPC and sentenced to undergo imprisonment for life and pay a fine of Rs.10,000/-, in default to undergo rigorous imprisonment for six months. In respect of the conviction against the appellant under Section 498-A no separate sentence is awarded. While arriving at the conclusion the High Court in addition to the other evidence available on record has also referred to the dying declaration recorded on 13.02.2008. In the said dying declaration the

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- A deceased Urmila @ Guddi had stated that the appellant, her mother-in-law had gone to the room and started quarrelling with her. She poured the bottle of kerosene kept in the room on her clothes and started quarrelling with her, during which time she torched her. The other evidence available on record related to the demand of dowry to which the other accused were also a party and, in that light, insofar as the death caused, the deceased had not made any allegation relating to death against the other accused. All the accused were convicted under Section 498-A of IPC and the appellant was convicted under Section 304-B as well, since the deceased had held her responsible for her death.
- B 12. The learned counsel for the appellant while assailing the judgment passed by the High Court has referred to the judgment passed by the Sessions Court wherein based on the same evidence available on record the Sessions Court had arrived at the conclusion that the charge against the accused was not proved beyond reasonable doubt. The learned counsel would further contend that the High Court has committed a serious error in discarding the earlier two dying declarations dated 06.02.2008 and 07.02.2008 wherein the deceased had categorically stated that the appellant nor her family members were responsible but it was an accident due to stove burst. In that light it was contended that the dying declaration dated 13.02.2008 is not reliable and the same was required to be discarded. It is contended that the dying declaration dated 07.02.2008 was recorded by the Tehsildar based on the request made as per procedure. Hence it is contended that the very approach adopted by the High Court was erroneous and the judgment is liable to be set aside and restore the judgment passed by the Sessions Court.
- C 13. The learned counsel for the State however seeks to sustain the judgment passed by the High Court. It is contended that the Sessions Court in fact had proceeded at a tangent and arrived at a wrong conclusion which is contrary to the well-established legal position. In the instant facts a young lady aged about 22 years was killed for non-fulfilling the dowry demand. The incident had occurred within the statutory period of seven years from the date of marriage and there was sufficient evidence available on record to indicate the demand for dowry immediately prior to the death. In that circumstance while the death had occurred, a presumption had arisen as contemplated under Section 304-B of IPC and Section 113-B of the Evidence Act. The ingredients, therefore, had been satisfied and it was for the appellant to dispel the
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presumption, which they have failed to do and, in that circumstance, the High Court having referred in detail to the legal position and the evidence available on record has arrived at its conclusion which does not call for interference.

14. In the instant case the undisputed position is that the deceased Urmila @ Guddi was given in marriage to one of the accused Jagdish Singh. The marriage was performed about four years prior to the date of the incident which occurred on 06.02.2008 and the death on 14.02.2008. Since the complaint against the accused was for demand of dowry and the death being caused for non-fulfilment of the same, the sequence which occurred leading to the demand of dowry as well as the death is to be noticed at the outset. In that regard the mother of the deceased Rajeshwari Devi was examined as PW1. She had stated with regard to the marriage and that her daughter was being harassed by her in-laws for taking insufficient dowry. The articles that were given at the time of the marriage were also referred and it was stated by her that her daughter came back to the parental house stating that her husband and the in-laws were demanding dowry. The father of the deceased was working at Delhi and as such the mother of deceased informed him about the demand. He returned to the village from Delhi after a couple of days and went along with his daughter Urmila to her in-laws. The incidents that occurred there are referred and also the daughter being beaten and being injured in the eye was referred. Immediately thereafter on 06.02.2008 she heard from other villagers that her daughter was burnt. Thereafter though she went and saw her daughter in the Base Hospital, Srinagar she was not allowed to accompany her daughter when she was shifted from the said hospital to Doon hospital in Dehradun.

15. In that circumstance she thereafter went to that place after her husband had reached. She had stated that when she initially went to Srinagar Hospital her daughter was surrounded by the accused and was not being allowed to speak to PW1, the mother. However subsequently when she visited her daughter on 13.02.2008 she was able to interact with the daughter who had at that stage informed her that her mother-in-law was responsible for her death as she had poured kerosene and burnt her. The father of the deceased was examined as PW3 who has also spoken with regard to the same in a manner to corroborate the version of PW1, the mother. PW2, Bheem Raj Singh who was examined as a witness being the uncle has stated with regard to PW1 having told

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- A him about the harassment caused by the in-laws of the deceased demanding for dowry and about the ultimate death. He has stated that whenever she went home, the deceased used to complain about her in-laws. PW4, Smt. Geeta Devi, a close relative of the deceased has also spoken in the same terms. The evidence of PW1 to PW4 would indicate that the same would not only establish the ingredients of Section 498-A IPC where there was a demand for dowry but would also satisfy the ingredients of Section 304B IPC relating to the cruelty and harassment being caused soon before her death and the same being in connection with the demand for dowry. Therefore, insofar as the conviction ordered by the High Court under Section 498-A of IPC the same is justified.
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- C 16. Insofar as the death having occurred and the appellant being convicted under Section 304B of IPC, in addition to the said evidence available on record the High Court has relied on the dying declaration dated 13.02.2008. As noticed, there are three dying declarations of deceased Urmila @ Guddi – one recorded on 06.02.2008 by DW-1-
- D Darshani Devi, Chairman, Mahila Mangal Dal; second recorded on 07.02.2008 by Tehsildar, Srinagar; and the third recorded on 13.02.2008 by PW-5-Shispal Singh Rawat, Additional Tehsildar by which time, the parents of deceased Urmila had also come. In the dying declarations recorded on 06.02.2008 and 07.02.2008, deceased Urmila had stated
- E that due to excessive pumping of stove, the stove exploded and she caught fire and sustained burn injuries and at that time, her father-in-law and mother-in-law i.e. the accused were on the second floor. In the third dying declaration recorded on 13.02.2008, deceased Urmila stated that on 06.02.2008 at about 07:00 p.m., appellant Kashmira Devi, her mother-in-law came to her room and started quarrelling with her and thereafter, her mother-in-law poured kerosene oil on her clothes and set her on fire. Deceased further stated that except her mother-in-law, no one was responsible for the incident.
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- G 17. When dying declarations of deceased Urmila were recorded on 06.02.2008 and 07.02.2008, accused were present in the room. However, by the time when her third dying declaration was recorded on 13.02.2008, parents of deceased Urmila had come and deceased had given the statement without any fear of the accused. On the very next day i.e. on 14.02.2008, deceased died and on 15.02.2008, PW-1- Rajeshwari Devi, mother of deceased filed a complaint under Section 156(3) Cr.P.C. before the Chief Judicial Magistrate, Rudraprayag. On
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29.02.2008, FIR in Crime Case No.2 of 2008 was registered under Sections 498-A and 304B IPC against all the accused. Since it has come in evidence that at the time of recording dying declarations on 06.02.2008 and 07.02.2008, her in-laws were present, it cannot be said that the statement was recorded voluntarily and without fear. A

18. The appellant is convicted under Sections 498-A IPC and 304B IPC – dowry death. For sustaining the conviction under Section 304B IPC, the following essentials must be satisfied: - B

- (i) the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances; C
- (ii) such death must have occurred within seven years of her marriage;
- (iii) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or by relatives of her husband;
- (iv) such cruelty or harassment must be for or in connection with demand for dowry; D
- (v) such cruelty or harassment is shown to have been meted out to the woman soon before her death. (Vide *Kans Raj v. State of Punjab and Others (2000) 5 SCC 207* and *Smt Shanti and Another v. State of Haryana (1991) 1 SCC 371*). E

19. In the present case, PW-1-Rajeshwari Devi, mother of deceased and PW-3-Bachan Singh, father of deceased has stated that deceased Urmila was harassed by her in-laws for bringing insufficient dowry. They have also stated that after the marriage, when deceased came to her parental home, she was complaining that her husband and in-laws including father-in-law, mother-in-law and others were demanding dowry. PW-1 further stated that deceased Urmila was beaten up by accused persons due to which, her eye was damaged and she was operated. PW-1 stated that when deceased again went back to her parental home, on 02.02.2008, PW-1 had taken deceased to her in-laws house where, they were not even offered a glass of water and the accused persons enquired as to what they have brought with them. PW-1 told them that they were not in a position to fulfil their demands and after overnight stay, on 03.02.2008, PW-1 returned to her house. From the evidence of PW-1, prosecution has proved that “soon before the F

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- A death”, deceased was subjected to cruelty and harassment. When prosecution has established that deceased was subjected to dowry harassment “soon before the death” and that within seven years of marriage deceased Urmila had died an unnatural death, the presumption under Section 113-B of the Evidence Act is to be raised against the appellant that she caused the dowry death. Once the prosecution is able to establish the ingredients of Section 304B IPC, it is for the accused to rebut the presumption. But the accused have not adduced any reliable evidence to rebut the presumption. The evidence of DW-1 and DW-2 relating to the incident will not be sufficient when the incident is viewed keeping in perspective the evidence of prosecution relating to the demand for dowry preceding the actual incident. In fact, when the deceased was shifted from Kota hospital, Srinagar to Dehradun hospital, PW-1 tried to accompany them but the accused refused to take PW-1 along. Not informing about the incident and refusal of the appellant and other accused to take PW-1 along with them to the hospital, are strong circumstances against the appellant.
- D 20. In the above background, the justification for the reliance placed on the third dying declaration dated 13.02.2008 by the High Court is to be examined. The evidence of PW1, as noted, would disclose that when she first went to the Hospital in Srinagar, she found that the deceased was surrounded by her husband and in-laws while PW1, the mother of the deceased was not allowed to interact with her daughter. It is in that circumstance the said declarations dated 06.02.2008 and 07.02.2008 were recorded. Firstly, the statement dated 06.02.2008 was not recorded by a Competent Authority or an Officer but is recorded by the so-called Panchayat in the manner to aid the accused. Insofar as the second dying declaration dated 07.02.2008 it is no doubt true that it has been recorded after a communication being addressed to the Tehsildar and after being certified by the doctor that the deceased was mentally fit to make the declaration. Though the said requirements are satisfied, the surrounding circumstances in which the statement was recorded while she was under the control of her in-laws. Such statements relied on by the appellant would not inspire confidence in the Court. In addition, it is noticed that the same is in the form of question and answer which could also be out of context depending on the manner in which the questions were put.
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21. As noted in the evidence of PW1, the mother of the deceased, she was not allowed to accompany the deceased when she was shifted to Doon Hospital. However, she subsequently went there and was able to interact with her daughter and in that circumstance after about a week from the incident the declaration was recorded on 13.02.2008 after being certified by the doctor about the deceased being conscious and fit to make the statement. The said statement refers to the incident and the manner in which it had occurred. The indicator to the truthfulness of such statement is that the deceased had only mentioned about the appellant i.e., the mother-in-law who had indulged in the act of pouring kerosene and setting her on fire. She had not implicated her husband nor her father-in-law who was in the house but has stated that her father-in-law was sitting in another room having her daughter on his lap and has in fact stated that when she started crying, her father-in-law came there and he extinguished the fire. If it was a case of false implication, there was no reason for the deceased to have been so specific insofar as the act of causing the death without naming the other members of the family when all of them were involved in the act of demanding dowry and was complaining earlier about the harassment meted out by them.. In such circumstance, the reliance placed on the dying declaration dated 13.02.2008 is justified.

22. While arriving at such conclusion the High Court has kept in view a decision of this Court in the case of *Nallam Veera Stayanandam & Ors. Vs. The Public Prosecutor, High Court of A.P.* (2004) 10 SCC 769 wherein it is held that each dying declaration has to be considered independently on its own merit as to its evidentiary value and one cannot be rejected because of the contents of the other. It is held therein that the Court has to consider each of them in its correct perspective and satisfy itself which one of them reflects the true state of affairs. The consideration made herein above would also indicate that on an independent consideration, the dying declaration dated 13.02.2008 is reliable for the reasons stated above. To the same effect the High Court has also relied on another decision of this Court in the case of *Ashabai & Anr. Vs. State of Maharashtra* (2013) 2 SCC 224 wherein it is held that when there are multiple dying declarations, each dying declaration has to be separately assessed and evaluated on its own merits.

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- A 23. The High Court has also taken note of a decision of this Court in the case of *State of Karnataka Vs. Suvarnamma & Anr.* (2015) 1 SCC 323 wherein it is held that the dying declaration recorded by the police officer was consistent with the circumstances on record while dying declaration recorded by the Magistrate was not found to be consistent. If the said decision is kept in view, as already noticed, though the dying declaration dated 07.02.2008 was recorded by Tehsildar, the circumstance in which it was recorded was taken note by us. Further, the dying declaration dated 13.02.2008 was recorded by the Additional Tehsildar, Shri Shishpal Singh who was examined as PW5. He has stated with regard to the memo received from the hospital and having met the medical officer he recorded the statement of the deceased who was lying with burn injuries in the emergency ward. The validity of the statement so recorded, therefore, stands established. In addition, the High Court has also referred to various other decisions on the subject. Hence the High Court having examined the matter threadbare has arrived at its conclusion in recording the conviction in the manner as it has done which is justified and does not call for interference.

- B 24. Having arrived at the above conclusion the quantum of sentence requires consideration. The High Court has awarded life imprisonment to the appellant on being convicted under Section 304-B IPC. The minimum sentence provided is seven years but it may extend to imprisonment for life. In fact, this Court in the case of *Hem Chand Vs. State of Haryana* (1994) 6 SCC 727 has held that while imposing the sentence, awarding extreme punishment of imprisonment for life under Section 304-B IPC should be in rare cases and not in every case. Though the mitigating factor noticed in the said case was different, in the instant case keeping in view the age of the appellant and also the contribution that would be required by her to the family, while husband is also aged and further taking into consideration all other circumstances, the sentence as awarded by the High Court to the appellant herein is liable to be modified.

- C G 25. In the result the following:

ORDER

- D (i) The conviction of the appellant recorded by the High Court under Section 304-B IPC and Section 498-A IPC through its judgement dated 29.06.2017 is upheld and affirmed.

(ii) The sentence ordered by the High Court through its order dated 10.07.2017 is modified and the sentence of imprisonment for life is altered by ordering the appellant to undergo rigorous imprisonment for a period of seven years which shall include the period of sentence already undergone by the appellant. The fine as imposed and the default sentence is sustained. A

(iii) The appeal is allowed in part, in the above terms.
(iv) The parties to bear their own cost.

Pending application, if any, shall stand disposed of.

Divya Pandey

Appeal partly allowed.

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