



REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL No.249/2013**

SHOOR SINGH & ANR.

... Appellant(s)

VERSUS

STATE OF UTTARAKHAND

...Respondent(s)

J U D G M E N T

MANOJ MISRA, J.

1. This appeal is against the judgment and order of the High Court¹ dated 26.04.2012, whereby, while affirming the conviction of the appellants under Sections 304-B and 498-A IPC², the appeal³ of the appellants was partly allowed thereby reducing the sentence awarded by the Trial Court⁴ from 10 years to 7 years R.I. under Section 304-B IPC and

¹ The High Court of Uttarakhand at Nainital

² Indian Penal Code, 1860

³ Criminal Appeal No.87 of 2010

⁴ Sessions Judge, Pauri Gharwal

maintaining the sentence of 1 year R.I. under Section 498-A IPC.

FACTUAL MATRIX

2. The appellants are father-in-law and mother-in-law, respectively, of the deceased (Neelam), who was daughter of Shanker Singh (PW-1) and Sarojini Devi (PW-2). The deceased was married to appellants' son Jitendra Singh (co-accused) on 1.03.2006. On 30.12.2006, deceased gave birth to a male child. Naming ceremony of the child was performed on 11.01.2007. On 17.01.2007, deceased died at her matrimonial home due to extensive burn injuries. Upon being informed of her death, PW-1 lodged a first information report⁵ (Ex. Ka-1) on the same day, *inter alia*, alleging that, - when he along with PW-2 had visited deceased's matrimonial home on 4.1.2007, deceased's father-in-law, mother-in-law, brother-in-law (i.e., husband's elder brother – not tried) and sister-in-law (husband's elder brother's wife – not tried) had told PW-1 and PW-2 that on the day of naming ceremony of

⁵ FIR

the child they would have to give a motor-cycle and cash of Rs.50,000/-. Besides that, it was alleged that when PW-1 and PW-2 visited deceased's matrimonial home on 11.01.2007, the deceased inquired from PW-1 and PW-2 whether they had brought motorcycle and cash. However, when PW-1 expressed his inability to meet the demand, the deceased told PW-1 that lot of pressure was being put on her and if the demand is not met, she would be killed. With these allegations, and by stating that accused had killed his daughter on account of the demand being not met, PW-1 lodged the FIR, which was registered as case crime No.1 of 2007 at P.S. Langur Walla-2, district Pauri Garhwal, under Sections 304-B, 498-A IPC and Sections 3/ 4 Dowry Prohibition Act, 1961, against three accused, namely, Jitendra Singh (husband of the deceased) and the appellants, who were all tried together by the Court of Session, Pauri Garhwal in Sessions Trial No.25 of 2007.

3. During trial, prosecution examined 7 witnesses. PW-1 (the first informant – father of the deceased); PW-2 (mother of the deceased); and PW-3 (uncle of the deceased) were family members of the deceased who proved the date of marriage

and alleged that the deceased was depressed on account of the demand. PW-4 was the doctor who conducted autopsy of the cadaver. He proved that the deceased had suffered extensive ante-mortem burn injuries which resulted in her death. PW-5 is cousin of the deceased who had arrived at the spot along with PW-1 on receipt of information regarding her death. He is also the inquest witness. PW-6 is the Patwari who made GD entry of the FIR and took initial steps of investigation such as preparation of inquest report and dispatch of the cadaver for autopsy. PW-7 completed the investigation and submitted charge-sheet. PW-7, *inter alia*, stated that at the time of inquest the body of the deceased was lying in the courtyard.

4. In their statement recorded under Section 313 CrPC⁶ the accused admitted:
 - (a) the factum of marriage;
 - (b) the date of marriage;
 - (c) the date of childbirth;

⁶ Code of Criminal Procedure, 1973

(d) that parents of the deceased visited her matrimonial home on 04.01.2007 to see their daughter and the child; and

(e) that on 11.01.2007 child naming ceremony was done.

The accused, however, denied demand of dowry/ motorcycle/ cash of Rs.50,000/- as well as harassment of the deceased. Jitendra Singh (i.e., husband of the deceased) stated that the deceased committed suicide due to depression on account of staying separate from him as no quarter was allotted to him, and also because a photograph of her with a male stranger was found. He had also stated that at the time of the incident he had gone to collect wood. Accused Shoor Singh (appellant no.1 herein) added that he had gone to Lansdowne at the time of incident. Similarly, accused Gangotri Devi (appellant no.2 herein) stated that she had gone out to wash clothes.

5. The defense had examined 4 witnesses (DW-1 to DW-4) and produced color photographs (Ex Kha-1 to Kha-6). DW-1 stated that the deceased used to accompany her for collecting grass and wood, but she never made any

complaint about her harassment on account of dowry demand. Rather, the deceased used to say that if she is not taken by her husband to his workplace she would die. DW-2 stated that in the morning of 17.01.2007 (i.e., date of the incident) she had seen Shoor Singh (appellant no.1 herein) going towards Lansdowne. DW-3 stated that between 12.30 and 1.00 p.m. he saw smoke bellowing from the house of Shoor Singh. When he reached there, he noticed that none of the accused were there, and the body of the deceased was lying outside the shutter in a burnt condition. Whereafter, he went to inform Gangotri Devi who was washing clothes near a water well. DW-4 stated that he was present at the time of inquest when he saw an empty can of kerosene and matchsticks lying near the body of the deceased; and smell of kerosene was all over.

6. The trial court primarily relied on the testimonies of PW-1, PW-2 and PW-3 to hold that the deceased was harassed soon before her death in connection with demand for a motorcycle and cash and, therefore, in view of the presumption under Section 113-B of the Evidence Act, 1872, the accused were liable to be convicted for dowry death, punishable under

Section 304-B IPC, and for cruelty, punishable under Section 498-A IPC.

7. Aggrieved therewith, two separate criminal appeals were filed before the High Court. One appeal was by the husband of the deceased and the other was by the appellants herein. Both appeals were decided by the impugned order. In so far as the accused Jitendra Singh is concerned, he has served out the sentence and has not filed any appeal. This appeal is, therefore, by father-in-law and mother-in-law of the deceased.
8. We have heard learned counsel for the parties and have perused the record.

SUBMISSIONS ON BEHALF OF THE APPELLANT(S)

9. Learned counsel for the appellants submitted:
 - (i) The autopsy report indicated no mark of injury, other than burn injuries, on the body of the deceased. Body of the deceased was found in the courtyard of the house. Further, the evidence indicated death during daytime. The defense

evidence indicated that when smoke was noticed, the witness reached the spot to find a burnt body of the deceased lying in the courtyard and, at that time, none of the accused persons were present. Even prosecution witnesses do not state that at the time of incident the accused were present in the house. All of this would suggest that it is a case of suicide, which could be for multiple reasons.

- (ii) There is no direct evidence regarding demand of dowry by the appellants. The testimonies of PW-1 and PW-2 do not support the FIR allegation that on 4.1.2007 appellants had demanded a motorcycle and cash from PW-1 and PW-2.
- (iii) There is no evidence that motorcycle or cash was demanded in connection with marriage. Hence, a case of dowry death is not made out.
- (iv) The courts below failed to test the merit of the allegations against the weight of surrounding circumstances and the deposition of prosecution witnesses during cross-examination.

Interestingly, PW-1 and PW-2, who had been visiting the matrimonial home of the deceased, admitted during cross-examination that they did not confront the accused in respect of the alleged demand as reported to them by their daughter (i.e., the deceased) because they thought it to be a joke. If it was so, the question of subjecting the deceased to cruelty does not arise.

- (v) Admittedly, husband of the deceased in connection with service was residing elsewhere. Accused in their statement under Section 313 CrPC stated that the deceased was unhappy and depressed because she was not able to live with her husband as no residential quarter was allotted to him. A suggestion to that effect was also given to the prosecution witnesses. Hence, this was a material circumstance explaining the drastic step to commit suicide.
- (vi) PW-1 tried to implicate even the elder brother of the husband of the deceased even though he resided in another town in connection with

service. This would suggest that there was a malicious attempt to implicate the entire family without any basis. In such circumstances, the Court ought to have been circumspect. More so, when no witness of the locality was produced in support of the prosecution case.

- (vii) Presumption under Section 113-B of the Evidence Act arises only when the necessary ingredients of a dowry death are proved beyond reasonable doubt. Here there was no direct and reliable evidence that the deceased was subjected to cruelty in connection with demand of dowry soon before her death. Hence, there was no occasion to raise a presumption in respect of a dowry death.
- (viii) There were sufficient reasons for the deceased to commit suicide, such as:

- (a) She was depressed for not being able to reside with her husband who had to be away from home in connection with his service.

(b) She was shamed by discovery of a photograph (Ex. Kha-1) wherein she was noticed alone with a male stranger in front of a waterbody.

SUBMISSIONS ON BEHALF OF STATE

10. On behalf of the prosecution (i.e., the State of Uttarakhand), it was submitted:

(i) PW-1, PW-2 and PW-3 have all been consistent about the deceased reporting to them that accused persons were demanding a motorcycle and cash of Rs.50,000/- and threatening her that if their demand is not met by the date of child naming ceremony, she would be killed. Naming ceremony was held on 11.01.2007 and soon thereafter the deceased died on 17.01.2007. Thus, deceased's statement was in respect of circumstances of the transaction which resulted in her death and, therefore, admissible in evidence under Section 32 (1) of the Evidence Act.

- (ii) The courts below justifiably raised a presumption of the offence of dowry death; and that presumption was not dispelled by the accused-appellants. Moreover, the appellants being father-in-law and mother-in-law of the deceased, residing in the same house where the deceased died an unnatural death, were liable to be convicted.
- (iii) The photograph (Ex. Kha-1) was not admissible in evidence as neither the person who took the photograph nor its negative was produced in evidence. Otherwise also, it did not reveal any such compromising position of which the deceased will be ashamed of.
- (iv) The appeal is concluded by concurrent findings of fact, therefore no case for interference is made out.

ANALYSIS/ DISCUSSION

11. Before we proceed to test the merit of the rival submissions, it would be useful to cull out certain facts as regards which there is no serious dispute. These are:

- (a) the deceased was married to the son of the appellants within seven years of her death;
- (b) the deceased died an unnatural death on account of ante-mortem burn injuries;
- (c) place of death of the deceased was her matrimonial home;
- (d) just 18 days before her death, the deceased had given birth to a male child;
- (e) prior to her death there was no police complaint or FIR in respect of harassment of the deceased for any reason whatsoever;
- (f) there is no evidence that any of the accused demanded dowry, or a motorcycle, or cash from the family members of the deceased either before the marriage or at the time of marriage; and

(g) there is no evidence that the deceased was physically assaulted by any of the accused in connection with demand for dowry or motorcycle or cash.

12. To constitute a 'dowry death', punishable under Section 304-B⁷ IPC, following ingredients must be satisfied:

- i. death of a woman must have been caused by any burns or bodily injury or it must have occurred otherwise than under normal circumstances;
- ii. such death must have occurred within seven years of her marriage;
- iii. soon before such death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and
- iv. such cruelty or harassment must be in connection with any demand for dowry.

⁷ **Section 304-B. Dowry Death.** – (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called 'dowry death', and such husband or relative shall be deemed to have caused her death.

Explanation. -- For the purpose of this sub-section, 'dowry' shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 [28 of 1961].

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life

The phrase 'otherwise than under normal circumstances' is wide enough to encompass a suicidal death.

13. When all the above ingredients of 'dowry death' are proved, the presumption under Section 113-B⁸ of the Evidence Act is to be raised against the accused that he has committed the offence of 'dowry death'. What is important is that the presumption under Section 113-B is not in respect of commission of an act of cruelty, or harassment, in connection with any demand for dowry, which is one of the essential ingredients of the offence of 'dowry death'. The presumption, however, is in respect of commission of the offence of 'dowry death' by the accused when all the essential ingredients of 'dowry death' are proved beyond reasonable doubt by ordinary rule of evidence, which means that to prove the essential ingredients of an offence of 'dowry death' the burden is on the prosecution.
14. In the instant case, it is not in dispute that the deceased died otherwise than under normal circumstances within seven

⁸ **Section 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.

Explanation.- For the purposes of this section, dowry death shall have the same meaning as in section 304 capital B of the Indian Penal Code [45 of 1860]

years of her marriage. However, the issue between the parties is about her being subjected to cruelty or harassment by her husband or his relative, soon before her death, in connection with any demand for dowry.

15. The testimonies of PW-1, PW-2 and PW-3 do not indicate that any demand for dowry was made by the accused-appellants either before or at the time of marriage of the deceased with their son. Further, there is no evidence that the accused appellants directly demanded a motorcycle or cash from any of the above witnesses. In fact, evidence is to the effect that the deceased had informed PW-1 and PW-2 on 4.1.2007 and 11.1.2007 about the demand for a motorcycle and cash. Further, from the deposition of PW-1 and PW-2, it appears that the aforesaid demand was not in connection with marriage but as a mark of celebration on birth of a male child.
16. No doubt testimonies of PW-1 and PW-2 would not be hit by the rule against hearsay evidence because it related to one of the circumstances of the transaction resulting in their daughter's unnatural death. However, a distinction must be drawn between admissibility and acceptability/reliability of

a piece of evidence. Merely because a piece of evidence is admissible does not mean that it must be accepted. Before accepting the evidence to hold that the fact in issue stands proved beyond reasonable doubt, the Court must evaluate the same against the weight of surrounding circumstances and other facts proven on record.

17. In the instant case, the witnesses PW-1 and PW-2 were asked whether they took up the issue of motorcycle /cash demand with the accused. Their reply was that they did not, because they took it as a joke. We fail to understand how parents could treat their daughter's multiple reporting of apprehension to her life, on account of demand being not met, as a joke. This creates a serious doubt about the truthfulness of the allegation more so when there is no allegation that any such demand was ever raised either before or at the time of marriage. This doubt gets fortified by change in stance of PW-1 from what was taken in the FIR. Notably, in the FIR it was alleged that the accused-appellants including their elder son, and his wife, had directly raised demand for a motorcycle and cash. This allegation was not supported by the deposition of both PW-1

and PW-2 while admitting that appellant's elder son was a doctor serving in another district. Thus, there appears to be a knee-jerk reaction to the unnatural death of their daughter to make out a case of dowry death. Besides that, no independent witness of the vicinity was examined. In our considered view, therefore, one of the essential ingredients of dowry death, namely, any demand for dowry, was not proved beyond reasonable doubt.

18. Indisputably, the accused have not been convicted for murder, and rightly so, because there was no worthwhile evidence to show that except for the burn injuries, which could be self- inflicted, the accused suffered any other ante-mortem injury. Moreover, the presence of the accused in the house at the time of occurrence is not proved. In such circumstances, the death was most probably suicidal though this would not make a difference for commission of an offence punishable under Section 304-B IPC if all the other ingredients of dowry death stand proved. But, as noted above, here harassment/ cruelty at the instance of the appellants in connection with any demand for dowry has not been proved beyond reasonable doubt. As regards the

reason to commit suicide, though it is not necessary for us to dwell upon, suffice it to say that husband of the deceased was in service and stayed away from the deceased. Suggestion was given to the prosecution witnesses, and statement was also made under Section 313 CrPC, that the deceased used to remain depressed for being unable to join her husband at the place of his posting due to lack of residential quarter. That apart, a photograph of the deceased (Ex. Kha 1), regarding which no dispute was raised by the prosecution witnesses, showing her alone with a male stranger had surfaced. In the statement under Section 313 CrPC a stand was taken that this photograph had shamed her. Be that as it may, once all the necessary ingredients of dowry death have not been proved beyond reasonable doubt, the presumption under Section 113-B of the Evidence Act would not be available to the prosecution. Hence, in our considered view, the appellants are entitled to be acquitted of the charge of offences punishable under Section 304-B and 498-A IPC.

19. The appeal is accordingly allowed. The order convicting and sentencing the appellants under Section 304-B and 498-A

IPC is set aside. The appellants are on bail. They need not surrender. Their bail bond(s) stand discharged.

20. Pending application(s), if any, stand disposed of.

.....**J.**
(J.B. Pardiwala)

.....**J.**
(Manoj Misra)

New Delhi;
September 20, 2024