

CASE NO.:
Appeal (crl.) 1029 of 2001

PETITIONER:
SUNIL BAJAJ... APPELLANT

Vs.

RESPONDENT:
STATE OF M.P.... RESPONDENT

DATE OF JUDGMENT: 11/10/2001

BENCH:
U.C. Banerjee & Shivaraj V. Patil

JUDGMENT:

SHIVARAJ V. PATIL J.

Leave granted.

The appellant has filed this appeal, aggrieved by the order dated 19.8.2000 passed by the High Court confirming the order of conviction passed under Section 304-B IPC and sentencing the appellant to undergo rigorous imprisonment for seven years by the trial court. The appellant was tried for offences under Section 304-B and in the alternative under Section 306 IPC. The trial court acquitted the appellant of the charge punishable under Section 306 IPC and convicted him under Section 304-B IPC. The prosecution case in brief was that the appellant married Suman on 19.3.1991 at Saharanpur in U.P. He was asking his wife Suman to bring money from her parents and her parents were giving money to her from time to time. In June, 1995, Suman came to Saharanpur and told her mother that the appellant was demanding an amount of Rs. 20,000/- and she further told that the appellant had illegal relations with the girls of doubtful character and used to bring those girls to his house; those girls had beaten her; the appellant was ill-treating and harassing her; he subjected her to cruelty with the result Suman within a period of seven years of marriage committed suicide after burning herself by sprinkling kerosene oil on her on 28.8.95 in Nanak Complex, New Market, Govindpura at Bhopal. On the information from Dr. Anup Debey about hundred percent burns of Suman Bajaj on telephone, Aishbag Police registered a case and F.I.R. was lodged on 30.8.1995 under Section 304-B IPC. The prosecution in all examined 12 witnesses to prove the case. One defence witness was also examined. The conviction was based upon the evidence of PW4, PW5, PW6 and PW9. PW4, PW5 and PW6 are the mother, father and brother of the deceased respectively and PW9 is the doctor who conducted post-mortem examination on the dead body. The appellant pleaded not guilty and his defence was that pecuniary condition of the parents of the deceased was not good; he himself is well off and had advanced money to the father of the deceased on several occasions; he was unable to return the money to the appellant and that he was falsely implicated in the case.

The learned counsel for the appellant urged that no

reliance can be placed on the evidence of PW4, PW5 and PW6, being close relatives of the deceased; the evidence given by them as to demand of dowry was too general and vague; their evidence suffered from contradictions on material points and they had motive to speak against the appellant. He further submitted that both the courts have failed to see that the economic condition of the appellant was much better than that of the parents of the deceased and there is no evidence to show as to how the parents raised money and whether they paid money at all to the appellant as dowry. The learned counsel strongly contended that there was no definite evidence to show that Suman was subjected to cruelty or harassment by the appellant soon before her death for, or in connection with any demand for dowry to attract offence under Section 304-B IPC; even the letters said to have been written by deceased Suman (Exbt. D/3 and P/9) do not support the case of the prosecution; in the absence of satisfying the ingredients of offence under Section 304-B IPC, order of conviction passed and sentence imposed on the appellant cannot be sustained.

The learned counsel for the respondent-State, in opposition, submitted that the trial court as well as the High Court were justified in convicting the appellant on the basis of the evidence brought on record.

We have given our attention and consideration to the submissions made by the learned counsel for the parties. Normally this Court will be slow and reluctant, as it ought to be, to upset the order of conviction of the trial court as confirmed by the High Court appreciating the evidence placed on record. But in cases where both the courts concurrently recorded a finding that the accused was guilty of an offence in the absence of evidence satisfying the necessary ingredients of an offence; in other words, when no offence was made out, it becomes necessary to disturb such an order of conviction and sentence to meet the demand of justice. In order to convict an accused for an offence under Section 304-B IPC, the following essentials must be satisfied:

- 1) The death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;
- 2) Such death must have occurred within 7 years of her marriage;
- 3) Soon before her death, the woman must have been subjected to cruelty or harassment by her husband or by relatives of her husband;
- 4) Such cruelty or harassment must be for or in connection with demand of dowry.

It is only when the aforementioned ingredients are established by acceptable evidence such death shall be called dowry death and such husband or his relative shall be deemed to have caused her death. It may be noticed that punishment for the offence of dowry death under Section 304-B is imprisonment of not less than 7 years, which may extend to imprisonment for life. Unlike under Section 498-A IPC, husband or relative of husband of a woman subjecting her to cruelty shall be liable for imprisonment for a term which may extend to three years and shall also be liable to fine. Normally, in a criminal case accused can be punished for an offence on establishment of commission of that offence on the basis of evidence, may be direct or circumstantial or both. But in case of an offence under Section 304-B IPC an exception is made by deeming provision as to nature of death as

dowry death and that the husband or his relative, as the case may be, is deemed to have caused such death, even in the absence of evidence to prove these aspects but on proving the existence of the ingredients of the said offence by convincing evidence. Hence, there is need for greater care and caution, that too having regard to the gravity of the punishment prescribed for the said offence, in scrutinizing the evidence and in arriving at the conclusion as to whether all the above mentioned ingredients of the offence are proved by the prosecution. In the case on hand, the learned counsel for the appellant could not dispute that the first two ingredients mentioned above are satisfied.

We have now to see whether the remaining two ingredients are also satisfied looking to the evidence on record. It is unfortunate that the High Court in the first appeal, as expected of it, did not analyse, evaluate and scrutinize the evidence for reappraisal. The High Court in a summary way without discussing the oral evidence of PW-4, PW-5 and PW-6 mainly on the basis of which the appellant was convicted, has stated that the oral evidence of these three witnesses is consistent with the contents of the letter Exbt. P/9. The High Court also observed that immediate cause for Suman to bring an end to her life was the conduct of the husband in bringing the girls of doubtful character to his house. Having said so, the High Court did not discuss and record reasons as to whether the deceased was subjected to cruelty for and in connection with demand of dowry soon before her death. It simply concluded that it had been proved that the accused demanded an amount of Rs. 20,000/- as dowry from the parents of Suman through her and subjected her to mental cruelty in connection with that demand. When there was serious challenge as to the demand of an amount of Rs. 20,000/- as dowry without discussing the evidence on this point such as whether the parents of the deceased were capable of arranging for Rs. 20,000/- and whether there was the so-called demand soon before the death of Suman was proved or not, the High Court should not have concluded that Suman was subjected to cruelty for or in connection with demand of dowry and that too when there was no evidence to support the said conclusion which resulted in grave consequences. The High Court has simply confirmed the finding of the trial court holding the appellant guilty of the offence. It is under these circumstances, it has become necessary for us to look at the material and relevant evidence brought on record.

Before proceeding further, we may indicate here that during the course of the argument, after going through the evidence, the learned counsel for the appellant was not able to pursue that the deceased was not subjected to mental cruelty on account of the appellant bringing the girls of bad character to his house but he hastened to add that the prosecution utterly failed to establish the demand of dowry by the appellant and that the deceased was subjected to cruelty for and in connection with demand of dowry. In this view, we focus our attention, in particular, to the last ingredient of the offence.

PW-1, Satyapal, in his evidence has stated that the appellant is a landlord and runs a shop; his two brothers are on good posts in Air Force; the economic condition of PW-5, the father of the deceased, was normal; the deceased whenever used to come to village, did not make any complaint. PW-4, mother of the deceased, has stated before the court in her evidence that since after the marriage, the appellant was harassing the deceased; in the month of June, 1995, the appellant had asked Suman to bring Rs. 20,000/- from her parents and they had told Suman that they will give Rs. 20,000/- after making arrangement; on 27.8.1995 at

7.30 P.M. Suman made a telephone call from Bhopal to Saharanpur and told her that the appellant was thinking of other girls and two girls had come with him in the house and those girls caused marpit with her and, therefore, she should send her father with Rs. 20,000/-; she has admitted in the cross-examination that no demand of dowry was made by the accused at the time of marriage; her husband is running the shop of watch repairs, earning Rs. 100-150/- per day; she has 5 sons and 3 daughters; 2 brothers of the appellant are Engineers in the Air Force and the financial condition of the appellant, his father and brothers is very good. She has further stated that after the marriage during the life time of suman, she did not go to Bhopal; she had gone to Bhopal after two months of the death of Suman, only then police had recorded her statement; she has also stated that I have no phone in my house. This is wrong to say that Suman had not made a telephone call to me. I do not know as to whether, after hearing the phone of suman, my husband had made the arrangement of rupees twenty thousand. I did not tell my husband that Suman has asked for rupees ten thousand. Even I did not tell my son Madan about this that Suman has asked for ten thousand rupees. It has come in the evidence that Suman has two children. PW-4 has stated that she knows reading and writing but pleaded ignorance whether there is a bank account of them. PW-5, father of Suman, has stated that on 27.8.1995, there was a telephone call of Suman and his wife attended the telephone call in the house of his neighbour and she had told him that Suman told her on telephone that she was very much disturbed; two girls had come to her house who beat her and that everything cannot be told on telephone and that she should send father soon. He also stated that the appellant used to demand money from Suman, therefore, at that time when he went to Bhopal from Saharanpur, he had taken a sum of Rs. 10,000/- with him with the idea to settle the dispute between the appellant and Suman. In cross-examination, he has stated that he had not told the Magistrate at that time that he had brought Rs. 10,000/- at the time of incident; there were material omissions. When confronted, he was not able to say why they were not recorded in Exbt. D/4. He contradicts his own report made in Exbt. P/7 stating that he had not got written in that report that upto six months after the marriage, the behaviour of the appellant and Suman remained good. When he was questioned as to why material facts were not written in the report Exbt. P/7, he says because on that day he was to receive the dead-body of Suman. PW-6 is the brother of Suman. He also has stated that Suman had telephoned on 27.8.95 that her father should go to Bhopal as she was very much disturbed. He was not able to say why it was not stated in the statement Exbt. D/6 that when he and his father came to Bhopal, they had brought Rs. 10,000/-. Both the courts have found that Exbt. D/3 and P/9 were the letters written by Suman. The marriage between the appellant and Suman took place on 19.3.1991. Exbt. D/3 is a detailed letter running into three pages. The very first sentence of the letter shows that the appellant and Suman were comfortable and in the entire letter there is no complaint or grievance of Suman whatsoever against the appellant. Exbt. P/9 is the letter written by Suman to her father before her death and recovered from the house at Bhopal. The said letter reads as follows:-

The further information is this that I am very sad. Papa Ji I am very much disturbed. The moment you receive this letter, please come at Bhopal immediately. Sunil has started bad work. The girls daily come in the house. They give me threats. Papa ji if you do not come then I may do anything. If you have a little care of your daughter then you will certainly

come. Sunil taunts me daily that your mother and father are not going to ask about your well being. If you like then you please being one brother. Rest of the things shall be disclosed when you come in Bhopal. Papa you please speak in support of your daughter. You will not speak anything which may give support to Sunil and father-in-law. You please make a telephone when you come. I will come to receive you at the Railway station. Durga bhaiya you please speak about this in the house of Mama Ji.

As can be seen from this document on which much reliance is placed by both the courts, there is absolutely nothing to indicate about the demand of dowry and there is not even a whisper about the same. If Suman was pressed by her husband to get money and if that was the cause for her sadness or difficulty, she could not have missed to write about the same, that too having written about the bad work of appellant and his bringing girls to the house. With this evidence on record, it is clear that

(i) There is no evidence of demand of dowry or subjecting Suman to cruelty for, or in connection with dowry other than general, vague and inconsistent statements of interested and motivated witnesses PWs 4, 5 and 6, being the parents and brother of Suman;

(ii) Not a single member, neighbour or a relative of parties either at Bhopal or at Saharanpur has come forward to speak about subjecting Suman to cruelty by the appellant in relation to demand of dowry;

(iii) It is the evidence of PWs 4, 5 and 6 that Suman had telephoned on 27.8.1995, a day earlier to her death; PW-4, mother of Suman had talked on telephone in the house of neighbour; Suman told her that she was very much disturbed on account of two girls brought to her house who beat her; at that time also Suman did not tell her mother PW-4 about demand of an amount of Rs. 20,000/- by the appellant; neither the neighbour, in whose house PW-4 received the telephone call, was examined nor any document was produced such as the telephone bill etc. to show that at least there was a call on that day at that time from the telephone number from which Suman talked to her mother PW-4 on telephone number in the house of neighbour; Suman talking on telephone with PW-4 on that day itself is not proved;

(iv) It has come in the evidence of these witnesses that the appellant and his family members were well-placed financially and the parents of Suman have big family, were not that comfortable financially;

(v) There was no demand of dowry at the time of marriage in 1991. Two children were born to them. There was no complaint of demand of dowry even in the letter Exbt. D/3 dated 9.3.1995 written by Suman to her father and brother; Similarly, no mention was made about demand of dowry in her letter Exbt. P/9, said to have been written soon before her death;

(vi) there is no evidence as to how father of Suman arranged money of Rs. 20,000/- or 10,000/-;

(vii) PW-4 did not tell PW-5 after receiving telephone call from

Suman on 27.8.1995 that any amount was demanded by the appellant. Even so PW-5 states that he had carried with him Rs. 10,000/-. The High Court says that oral evidence of these witnesses PWs 4, 5 and 6 is consistent with Exbt. P/9. As already noticed above, in Exbt. P/9 there is nothing to show about demand of dowry/amount;

(viii) There are material contradictions and serious omissions in the statements of PWs 4, 5 and 6, as can be seen from their evidence;

(ix) The conduct of the appellant bringing girls of bad character to his house and those girls troubling Suman appear to be the cause of her misery. From the evidence brought on record that Suman was subjected to mental cruelty on account of the same is clear but there is nothing to establish that this mental cruelty was for and in connection with demand of dowry; may be Suman could not withstand and tolerate conduct of her husband of being in the company of other girls of bad character and may be on account of the same, she has put an end to her life;

(x) PWs 4, 5 and 6, on account of Suman having died of burns, obviously were angry against the appellant and had every reason to involve the appellant for the offence under Section 304-B IPC.

It is unfortunate that trial court did not properly and objectively consider the evidence to reach a conclusion that the appellant was guilty of the offence. It may be also noticed here that the appellant was acquitted for the charge under Section 306 IPC. The High Court, as already stated above, did not re-appreciate the evidence as first court of appeal on criminal side and has disposed the appeal in a summary way, confirming the order of conviction and sentence passed by the trial court. In the light of what is stated above, in our view, both the courts committed serious and manifest error in concluding that the appellant was guilty of the offence when the crucial and necessary ingredient that the deceased Suman was subjected to cruelty or harassment by him soon before her death for or in connection with demand of dowry was not established and also looking to the evidence and circumstances cumulatively. Under these circumstances, the impugned judgment is unsustainable as it suffers from infirmity and illegality as indicated above.

In view of what is stated above, this appeal is entitled to succeed. The impugned judgment of the High Court confirming the order of conviction and sentence passed by the trial court is set aside. The appellant is acquitted. He be set at liberty forthwith if he is not required in any other case.

.....J.
[U.C. Banerjee]

.....J.
[Shivraj V. Patil]

October 11, 2001.