

**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION**

Criminal Appeal No.1550 of 2011

OM PRAKASH & ANR.

**.... Appellant(s)**

Versus

STATE OF HARYANA

**.... Respondent  
(s)**

**J U D G M E N T**

**L. NAGESWARA RAO, J.**

**1.** FIR was registered on the basis of a statement of Nain Singh (PW-1) against the Appellants under Sections 498 A, 304 B, 201 and 34 of the Indian Penal Code, 1860 (hereinafter referred to as '*the IPC*'). According to the FIR, Kamla was married to Shyam Sunder, son of Jodh Raj (Appellant No.2) on 19<sup>th</sup> April, 1992. She was consistently being harassed by Shyam Sunder for insufficient dowry. As Kamla was resisting the demand, she was beaten by Shyam Sunder at the instigation of the Appellants. Appellant No.1 is the brother of Shyam Sunder. The family members of deceased made attempts to speak to

Shyam Sunder and the Appellants not to trouble Kamla for dowry, all in vain. Information was received on 13.03.1997 that Kamla died on the night of 12.03.1997. Immediately, they rushed to the village Ramgarh where the Appellants and the deceased were living. They came to know that Kamla died in the intervening night of 11/12.03.1997. It was stated in the FIR that the informant believed that the Appellants and Shyam Sunder had burnt the dead body of Kamla after causing her death and had thrown the ashes into Jamuna river.

**2.** After completion of investigation, the Appellants and Shyam Sunder were charged under Sections 304 B and 201 IPC. Shyam Sunder was convicted under Section 304 B IPC and sentenced to seven years rigorous imprisonment. The Appellants were convicted under Section 201 IPC and sentenced to rigorous imprisonment for a period of one year and a fine of Rs.1,000/-. The High Court dismissed the criminal appeal filed by the Appellants and Shyam Sunder affirming the conviction and sentences imposed on them by the Trial Court. While issuing notice in the SLP filed by the Appellants, this Court dismissed the SLP filed by Shyam Sunder. In this appeal,

we are concerned with the conviction and sentence of the Appellants under Section 201, IPC.

**3.** After considering the evidence on record, the Trial Court found that the dead body of Kamla was hurriedly cremated before her family members reached the village of the accused. The Trial Court accepted the case of the prosecution that Kamla's death was unnatural. The allegations made against the Appellants by the prosecution witnesses regarding the demand of dowry and harassment were not accepted by the Trial Court. However, the demand of dowry by Shyam Sunder and the physical assault by him on the deceased was held proved. The oral evidence that the Appellants instigated Shyam Sunder to beat the deceased Kamla was not believed by the Trial Court. On the basis of the said findings, Shyam Sunder was convicted under Section 304 B. However, the Appellants were acquitted under Section 304 B as the Trial Court did not find any reliable evidence regarding the harassment meted out by the Appellants on the deceased.

**4.** The Appellants were convicted under Section 201 IPC on the basis of the oral testimonies of Nain Singh (PW-

1) and Attar Singh (PW-2). The High Court affirmed the convictions of the Appellants under Section 201 IPC by observing that the dead body of Kamla could not have been cremated without the active connivance of the Appellants.

**5.** As the Trial Court convicted the Appellants on the basis of the oral evidence of PW-1 and PW-2, it is necessary for us to examine their testimonies. PW-1, Nain Singh who is brother of the deceased is also the informant in this case. In his testimony, he spoke about the dowry demand and the harassment undergone by his sister. He also mentioned about the unnatural death of his sister and that the fact of cremation done in a hurry before he and his family members reached Ramgarh village. It is relevant to note that there is improvement made by him regarding the involvement of the Appellants in his deposition before the Court. In the FIR he stated that the Appellants were instigating Shyam Sunder to beat the deceased for the purpose of dowry. In his oral evidence, PW-1 stated that the Appellants had also physically assaulted the deceased. PW-1 deposed that he made enquiries in the village about the death of his sister

Kamla. He learned that his sister was done to death on 12.03.1997 and was cremated. He could not give the particulars of the persons from whom he came to know about the death of his sister and the hurried cremation. PW-2, Attar Singh who is also a brother of the deceased corroborated the evidence of PW-1 regarding the death of his sister. In his evidence, he categorically stated that there was no demand of dowry made by the accused at the time of the marriage. In respect of the Panchayat that was supposed to have been conducted at the behest of the family members of the deceased, PW-2 deposed that there were no respectable person from their community who were associated.

**6.** PW-6, the Investigating Officer submitted that the deceased had sustained acute pain in the abdomen due to which she died which fact was revealed during the investigation. He further deposed that there was no other cause of death which surfaced during the investigation. He also stated that the marriage between the deceased and Shyam Sunder was performed in a simple manner. A perusal of the oral testimonies of the crucial witnesses would disclose that there is absolutely no material

connecting the Appellants to the crime. In the absence of any evidence, the Trial Court had rightly acquitted the Appellants for the offence under Section 304 B IPC. However, the Appellants were convicted under Section 201, IPC by the Trial Court relying upon the evidence of PW-1 and PW-2. A close scrutiny of the evidence of PW-1 and PW-2 does not disclose any material to implicate the Appellants in the offence under Section 201, IPC. The FIR refers to the statement of PW-1 that he believed that the Appellants and Shyam Sunder killed Kamla and cremated her. The High Court affirmed the conviction of the Appellants on an assumption that the cremation of the body of Kamla was not possible without the active connivance of the Appellants. We are convinced that the Appellants are entitled to the benefit of doubt in view of the lack of evidence regarding their involvement for an offence under Section 201, IPC. Therefore, the conviction and sentence of the Appellants is set aside.

**7.** For the aforementioned reasons, the appeal is allowed. Bail bonds of Appellant No.1, Om Prakash stand discharged.

.....J  
**[L. NAGESWARA RAO]**

.....J  
**[M.R. SHAH]**

New Delhi,  
March 29, 2019