

RAJAYAN  
v.  
STATE OF KERALA AND ANR.

MARCH 3, 1998

[M.K. MUKHERJEE AND S.S. MOHAMMED QUADRI, JJ.]

*Indian Penal Code, 1860 :*

*Sections 304-B (1) and 498-A—Dowry death—Suicide committed by the deceased wife—Evidence of deceased's parents showing that since the date of marriage appellant constantly demanding dowry—On the betrothal day land transferred in favour of appellant—Evidence further showing that even till two years after the marriage, there was continuous demand by dowry—Two independent witnesses deposed that the appellant was quarrelling with the deceased for more dowry—The appellant in his statement under Section 313 Cr PC going to the extent of stating that deceased was not his wife—In such circumstances, the High Court rightly held that the deceased was subjected to cruelty for dowry soon before her death for which she committed suicide—Conviction under Section 304-B, upheld—Criminal Procedure Code, 1973, Section 313.*

*Criminal Trial :*

*Independent witnesses—Testimony of—Evidentiary value—Testimony of such witnesses acceptable if there is no reason to disbelieve them—Penal Code, 1860, Sections 304-B(1) and 498-A.*

*Appreciation of evidence—One of the witnesses deposing that appellant came to his house to place his demand for additional dowry and he agreed to place his demand before the parents of the deceased and that he did go to the parents—Omission of this fact in his statement under Section 161 Cr PC—Effect of—Held, even if such omission amounted to material contradiction, still it did not impair his unresbutted evidence that the appellant came to the house of the witnesses with the demand for additional dowry—Criminal Procedure Code, 1973, Section 161.*

*Criminal procedure Code, 1973—Section 378—Appeal to the High Court against acquittal—When justified—Trial court acquitted the appellant from the charges of cruelty and demand of dowry on an erroneouse reasoning—*

**A** *Trial court failed to consider material evidence on record—Patent infirmity in the judgment and order of trial court—In such circumstances setting aside of the acquittal and conviction of the appellant under Section 304-B(1) and 498-A IPC by the High Court, upheld—Penal Code, 1860, Sections 304-B(1) and 498-A.*

**B** There were constant demands of dowry by the appellant from his wife and her parents. When the demand was not immediately met the appellant and the other members of his family tortured and harassed the deceased-wife. The wife ultimately committed suicide. The evidence of PWs 1 and 2 (Parents of the deceased) and PW 5, who was cousin of the deceased clearly pointed to the demand of dowry and ill treatment of the deceased due to non fulfilment of the same. A plot of land was transferred in name of the appellant on the day his wife committed suicide. On a charge framed under Section 304-B(1) read with 498-A IPC, the trial court acquitted the appellant and his mother and two sisters on an erroneous interpretation of the evidence on record.

**C**

**D** The State filed an appeal before the High Court and the mother of the deceased filed a revision petition before the High Court. The High Court by a common judgment while upholding the acquittal of other accused, set aside the acquittal against the appellant and convicted him for offences under Section 304-B(1) and 498-A IPC. Hence the appeal.

**E**

Dismissing the appeal, this Court

**F** HELD : 1.1. It stands established from the evidence, both oral and documentary, that even before the date of marriage the appellant had been insisting upon dowry and on the betrothal day itself, certain land had to be transferred in his favour. The evidence further establishes that at the time of marriage some gold ornaments were given to the deceased. Then again it is the concurrent finding of the courts below that since the third day after marriage the appellant was making further demands of dowry which ultimately compelled PWs 1 and 2 to give him a sum of Rs. 50,000 on 10-9-1986. The evidence on record also demonstrates that before marriage and even till two years thereafter the appellant was continuing with his demand for dowry and that the deceased was subject to cruelty, both mental and physical. The patent infirmity in the judgment of the trial court in this regard is that it considered the demand subsequently made in isolation and also failed to notice material evidence on record. [66-H; 67-A-C]

**G**

**H**

1.2. The evidence of PWs 1 and 2 stands amply corroborated by the evidence of PW 5. PW 5 testified that the appellant, accompanied by the deceased, went to his house and told him that the appellant was to get a sum of Rs. 10,000 and 3 sovereigns, as the balance of dowry and that he should intervene in the matter and persuade PWs 1 and 2 to handover the same. In view of the insistence of the appellant he gave an assurance to him that he would talk to PWs 1 and 2 and ensure that the money is paid and the ornaments are given to him. Thereafter, PW 5 met PWs 1 and 2 and asked them to accede to the outcome of his talk with PWs 1 and 2 the deceased met with her death. The trial court disbelieved the evidence of PW 5 as in the statement recorded under Section 161 CrPC he did not mention that he went to the house of PWs 1 and 2 and they told him that they would accede to his demand. Even if it is assumed that PW 5's omission to make such statements amount to material contradictions, still then, it would not in any way impair his unrebutted evidence that the appellant came to his house and asked for additional dowry. There is no reason to disbelieve this evidence. The evidence of cruelty and harassment for non-payment of additional dowry is also furnished by CW 1(Sister Veronica), who at the material time was the Mother Superior of the local "Daughters of Mary" Convent and known to the parties before and PW 6, an Advocate. [67-E-H; 68-A]

2. The stand of the appellant in the statement made by him under S. 313 CrPC that the deceased was not his wife, cannot also be ignored. Obviously because his continuous and persistent demand, for dowry were not being met by PWs 1 and 2, the appellant went to the extent of even disowning the deceased. Needless to say such conduct of the appellant is an eloquent proof of his having subjected the deceased to mental and physical cruelty. Unfortunately all these aspects of the matter were not considered by the trial court from a proper perspective. [68-D]

3. Having analysed the entire evidence on record and agreeing with the High Court that the deceased was subjected to cruelty by the appellant for dowry soon before her death for which she committed suicide. The conviction of the appellant under Section 304-B IPC must, therefore, be upheld. Since the sentence of rigorous imprisonment for seven years awarded to the appellant for his conviction is the minimum prescribed, the question of interfering with the same also does not arise. [68-E-F]

**A** From the Judgment and Order dated 2.9.94 of the Kerala High Court in in Crl. A. No. 382/91 and Crl. R.P. No. 600 of 1991.

M.P. Vinod for the Appellant.

E.M.S. Anam and G. Prakash, (M.T. George) (N.P) for the Respondents.

**B**

The following Judgment of the Court was delivered by

**C** **M.K. MUKHERJEE, J.** Within 3-1/2 years of her marriage Sanalkumari, a young housewife, met with her death on October 5, 1987 by falling in a well in her matrimonial home. Alleging that it was a 'dowry death' and that her husband (the appellant before us), mother-in-law and two sisters-in-law were responsible for the same a case was registered against them. Following the charge-sheet (challan) submitted by the Police and the committal enquiry held by a Magistrate, they were placed on trial before the Sessions Judge, Thiruvananthapuram to answer a charge under Section 304B I.P.C. The trial ended in an acquittal of all of them; and aggrieved thereby the State of Kerala filed an appeal and the mother of the deceased filed an appeal and the mother of the deceased filed a revision petition in the High Court. In disposing of them by a common judgment the High Court reversed the acquittal of the appellant and convicted him for the above offence. The acquittal of others was however upheld. The above judgment of the High Court is under challenge in these appeal preferred by the appellant.

**E**

The prosecution case briefly stated is as follows: The appellant married the deceased, daughter of P.Ws. 1 (Leela Bai) and 2 (Madhavan Nadar) on June 7, 1984 in the Malamkara Syrian Catholic Church, Kanjiramkulam. At the time of the marriage he obtained by way of dowry 20 cents of land and 2 gold ornaments worth 20 sovereigns. The document for the transfer of the land was executed by P.Ws 1 and 2 on the date of the betrothal. Even on the 3rd day after marriage the appellant started expressing dis-satisfaction on the quantum of dowry. As he had by then started construction of a building on a land belonging to his father availing a loan and the loan amount was exhausted, he approached P.Ws. 1 and 2 for the balance amount required to construct the building. Since P.Ws. 1 and 2 failed to meet his demand he and the other members of his family started harassing and ill-treating the deceased. In the meantime, the deceased had become pregnant. She was, however, not allowed to go to her parents' house prior to the delivery; and even after she was admitted in the hospital for the delivery, they were not intimated about it. The deceased gave birth to a female child on July 6, 1985. As a result of

**H**

the mental torture during pregnancy, she developed post partum psychosis and was under the treatment of P.W. 12 (Dr. M.S. Sivakaumar). Finding the pitiable predicament of the deceased P. Ws. 1 and 2 gave Rs. 50,000 in cash to the appellant as demanded and obtained a release of the 20 cents of land transferred in his name. Thereafter, the appellant put forth a demand for an additional amount of Rs. 10,000 and 3 sovereigns. As that demand was not immediately met by P.Ws. 1 and 2 the appellant and other members of his family continued to torture and harass the deceased. When the torture became unbearable she committed suicide by jumping into the well in the house of the appellant.

The appellant pleaded not guilty to the charge levelled against him and denied the prosecution story of demand of dowry and torture and harassment on that score. He asserted that he had a happy conjugal life and that her death was owing to an accidental fall in the well. Though during cross-examination of P.Ws. 1 and 2 it was not even suggested to them that the deceased was not his wife, in his examination under Section 313 Cr. P.C. he denied that fact also.

In support of their respective cases the prosecution examined 20 witnesses and the defence examined 6 witnesses.

On consideration of the evidence adduced by the parties the trial Court first recorded the following findings:-

- (i) the deceased was the legally married wife of the appellant; (ii) she committed suicide on October 5, 1987;
- (iii) there was a demand of dowry in the form of landed property, cash and gold ornaments for the marriage between the appellant and the deceased; and
- (iv) a dowry problem was involved in the marriage relationship between he appellant and the deceased.

The trial Court proceeded to consider whether the requirements of Section 304B(1) I.P.C. were factually established in the case with the following observations :-”

“As noticed above the demand for Rs. 50,000/- could not have continued beyond September, 1986. But P. Ws. 1 and 2 state that immediately after the transaction evidenced by Exhibit P3 and Exhibit D1 the 1st accused made a demand for a further payment of Rs. 10,000

A as given to the elder daughter and also wanted the deficit of 3  
 B sovereigns in gold ornaments. P. W. 2 says that his daughter was in  
 tears hearing this and she stated that if further amounts were to be  
 paid to the 1st accused her younger brother and sisters would not get  
 even 10 cents. If there had been such a demand for payment of  
 Rs. 10,000 or for 3 sovereigns gold ornaments and cruelty and  
 harassment on that account till Sanalkumari's death, then it will be a  
 "dowry death".

and answered the same in favour of the accused with the following words:-

C "Here the evidence shows that the squabbles between the parties  
 over allotment of the dowry could have caused mental pain to the  
 deceased before September, 1986. But there is no acceptable proof of  
 demands for dowry thereafter and harassment on that account. The  
 evidence about the incident in 1987 only indicate that the mother-in-  
 law and the daughter-in-law possibly could not get along well but  
 D there is no proof of a rift between the 1st accused and the deceased.  
 Thus the prosecution has not succeeded in proving that the accused  
 persons were guilty of cruelty or harassment as contemplated by  
 Sections 304B and Section 498A I.P.C. and that the death of Sanalkumari  
 was a dowry death."

E In appeal the High Court concurred with all the findings recorded by the trial  
 Court against the appellant but disagreeing with the above quoted finding in  
 his favour passed the impugned judgment.

F Keeping in view the well settled principle of law that an order of  
 acquittal ought not to be set aside unless it is found to be patently wrong  
 and wholly unsustainable we have perused the entire evidence and the  
 judgments of the Courts below. Our such exercise persuades us to hold, at  
 the outset, that the concurrent findings of fact recorded by the Courts below  
 in favour of the prosecution are unassailable and need no interference  
 whatsoever. We are therefore left with the question whether the High Court  
 G was justified in reversing the finding of the trial Court that there was no  
 satisfactory evidence to prove that the deceased was subjected to cruelty or  
 harassment by the appellant for or in connection with any demand for dowry.

H It stands established from the evidence, both oral and documentary,  
 that since before the date of marriage the appellant had been insisting upon  
 dowry and on the betrothal day itself certain land had to be transferred in his

favour. The evidence further establishes that at the time of marriage some gold ornaments were given to the deceased. Then again it is the concurrent finding of the Courts below that since the 3rd day after marriage the appellant was making further demands of dowry which ultimately compelled P.Ws. 1 and 2 to give him a sum of Rs. 50,000 on September 10, 1986. The evidence on record also demonstrates that from before marriage and even till two years thereafter the appellant was continuing with his demand for dowry and that the deceased was subjected to cruelty, both mental and physical, on that score since marriage. If in the background of the above facts and circumstances, the relevant evidence of P.Ws. 1 & 2 and P.W. 5 (Sudhakarān), a cousin of the deceased, is read there cannot be escape from the conclusion that the appellant continued with his demands for dowry and ill-treated the deceased till the month of September 1987. The patent infirmity in the judgment of the trial Court in this regard is that it considered the demand subsequently made in isolation and also failed to notice material evidence on record.

P.Ws. 1 and 2 categorically stated that even after the sum of Rs. 50,000 was paid the appellant made a demand for further payment of Rs. 10,000 on the specious plea that they (P.Ws. 1 and 2) had at the time of the marriage of their elder daughter given Rs. 60,000 as dowry and that he was yet to receive gold ornaments worth 3 sovereigns, as promised at the time of his marriage. It is also the evidence of P.W.2 that his daughter was in tears hearing this. The evidence of P.Ws.1 and 2 in this regard stands amply corroborated by the evidence of P.W. 5. He testified that on September 27, 1987 the appellant, accompanied by the deceased went to his house and told him that he (the appellant) was to get a sum of Rs. 10,000 and 3 sovereigns as the balance of dowry and that he should intervene into the matter and persuade P.Ws. 1 and 2 to handover the same. In view of the insistence of the appellant he gave an assurance to him that he would talk of P.Ws. 1 and 2 and ensure that the money is paid and ornaments given to him. Thereafter, P.W.5 met P.WS. 1 and 2 and asked them to accede to the demand of the appellant. Before, however, he could communicate to the appellant the outcome of his talk with P.Ws. 1 and 2 the deceased met with her death. The trial Court disbelieved the evidence of P.W. 5 as in the statement recorded under Section 161 Cr. P.C. he did not mention that he agreed to request P.Ws. 1 and 2 to meet the demand of the appellant nor did he mention that he went to the house of P.Ws. 1 and 2 and they told him that they would accede to the demand. Even if it is assumed that P.W.5's omission to make such statements amount to material contradictions, still then, it would not in any way impair his un rebutted evidence that the appellant came to his house and asked for

A the additional dowry. Having carefully gone through his evidence we find no reason whatsoever to disbelieve. The evidence of cruelty and harassment for non-payment of additional dowry is also furnished by C.W.1 (Sister Veronica), who at the material time was the Mother Superior of the local 'Daughters of Mary' Convent and known to the parties from before and P.W.6 (Gangadharan Nadar), an Advocate practising in the Courts at Nanyattinkara. C.W.1's good offices were requisitioned by P.Ws. 1 and 2 to bring harmony into the life of the deceased subsequent to September 10, 1986, and when C.W.1 was approached by them P.W.6 was present. Both of them stated that P.W.1 told them that the appellant was quarrelling with the deceased for getting more money as dowry. Both these witnesses are independent witnesses and there is no reason whatsoever to disbelieve them. While on this point we cannot also ignore the stand taken by the appellant in the statement made by him under Section 313 Cr. P.C. that the deceased was not his wife. Obviously because his continuous and persistent demands for dowry were not being met by P.Ws. 1 and 2, the appellant went to the extent of even disowning the deceased. Needless to say such conduct of the appellant is an eloquent proof of his having subjected the deceased to mental cruelty. Unfortunately, all these aspects of the matter were not considered by the trial Court from a proper perspective.

E Having analysed the entire evidence on record we are in complete agreement with the High Court that the deceased was subjected to cruelty by the appellant for payment of dowry soon before her death for which she committed suicide. The conviction of the appellant under Section 304B I.P.C. must, therefore, be upheld. Since the sentence of rigorous imprisonment for seven years awarded to the appellant for his conviction is the minimum prescribed, the question of interfering with the same also does not arise.

F We, therefore, do not find any merit in these appeals dismiss the same.

R.K.S.

Appeal dismissed.