

VIKAS
v
STATE OF RAJASTHAN

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AUGUST 2, 2002

[M.B. SHAH, BISHESHWAR PRASAD SINGH AND H.K. SEMA, JJ.]

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Penal Code, 1860 : Sections 302 r/w 120-B, 304-B, 364 and 498: Murder—Wife tortured and murdered by husband for not bringing adequate dowry—Conviction of husband and her parents—High Court maintained the conviction—Appreciation of circumstantial evidence by High Court—Correctness of—Held, High Court has not committed any error in appreciating the evidence adduced in proof of circumstances connecting the accused with the crime though, it is not necessary for it to re-appreciate the evidence—Evidence Act, 1872—Circumstantial evidence.

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According to the prosecution, accused-appellant had allegedly tortured his wife for not bringing adequate dowry, so she came to her parents' house. On the fateful day, accused picked his wife from the residence of PW3, a relative of the deceased, and allegedly murdered her by drowning in a river. On the next day, PW10, brother of the deceased, went to the house of accused for delivering medicines as she was under treatment, but accused refused to accept medicines on the ground that she was not at home. Parents of the deceased carried out search for the deceased but it was of no avail and an FIR was lodged against the accused, his parents and two married sisters for harassment. During investigation, dead body and also ornaments of the victim were recovered at the instance of accused-husband. Trial Court convicted the accused-husband for offences under Sections 302, 364, 498A and 304-B IPC and his parents were convicted for offences under Sections 364, 302, 498A and 304-B IPC, however acquitted his sisters. On appeal, High Court maintained the convictions of accused under Sections 302 and 498A but set aside conviction under Section 304-B and 384 IPC. Hence this appeal.

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It was contended for the appellant that High Court has omitted to consider material contradictions in the evidence of PWs.; that when the deceased was driven out of the house there was no necessity of accused bringing the deceased back to his house; that there was nothing on record to establish

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A that accused had gone to the house of PW3 to pick up the deceased; that there was no evidence on record that motor bike used by the accused was in working condition and belonged to him; and that the recovery of various articles at the instance of accused was not reliable.

B Dismissing the appeals, the Court

C HELD: 1.1. Neither the High Court nor trial Court committed any error in relying upon the evidence of prosecution-witnesses for arriving at the conclusion that appellant had taken away the deceased from the house of PW3 and thereafter on the next day when PW10, brother of the deceased, went to the house of appellant, she was not found and a false statement was made by the accused that he had not taken away the deceased, with him. [441-F]

D 1.2. The dead body of the deceased was recovered at the instance of accused-husband on the basis of his disclosure statement while he was in custody, which is proved by the evidence of PW18, Dy. S.P. who has stated that accused led the police party to the place from where he pushed the deceased in the river and they found the dead-body which was that of deceased. This discovery of the dead-body at the instance of accused is most relevant circumstance in the instant case. [441-G-H; 442-A]

E 1.3. Post-mortem examination report is proved by PW14, one of the Members of the Medical Board constituted for carrying out the post-mortem. [442-B]

F 1.4. At the instance of accused ornaments were also found in the safe of almirah from his room. PW8 has proved the recovery of these ornaments and also one saree from another almirah from the house of the accused. PW11, Munsif and Judicial Magistrate, has deposed about the identification of the ornaments by PW3 and PW10. Further, the High Court has rightly relied upon the recovery of golden chain, which deceased was wearing when she had gone to the house of PW3. The said article was recovered at the instance of accused from his house. This incriminating circumstance certainly points out the guilt of the accused; otherwise the golden chain would not have been found from the almirah but it would have been on the dead body. From the aforesaid evidence, it is clear that there are no material contradictions in the evidence of prosecution witnesses. And except some minor variations the prosecution story is cogent and consistent with regard to demand of dowry and deceased accompanying her husband on the fateful day. [442-C-F]

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1.5. There is evidence on record that accused came to the house of PW3 on 'vicky' and he was seen by other witnesses riding the said motor bike. It was not necessary for the prosecution to prove that accused was owner of the 'vicky' used by him. The submission for the appellant that there was no reason for him to go to the house of PW3 for picking up his wife when she was driven out, requires no consideration because it is apparent from the evidence on record that the parents of the deceased were keen to maintain the matrimonial relations. Even though she was driven out on two to three occasions, she was again sent back by her parents to her matrimonial house. [442-F-H]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 299 of 2001.

From the Judgment and Order dated 18.4.2000 of the Rajasthan High Court in D.B. CrI. A. No. 374 of 1997.

U.N. Bhachawat, Harinder Mohan Singh, Anil Hooda and Alok Bachawat for the Appellants.

Vijay Bahuguna, Ranjit Thomas and Ms. Bharati Upadhyay for Javed M. Rao, for the Respondent.

The Judgment of the Court was delivered by

SHAH, J. Daily, demon of dowry is devouring lives of young girls, who marry with high hopes of having heavenly abode in their husband's house. In few cases, guilty are punished but it has no deterrent effect on mothers-in-law or sisters-in-law who might have suffered similar cruelty/tyranny. This deep rooted social evil requires to be controlled not only by effective implementation of the Dowry Prohibition Act, 1961, but also by the Society. The Society has to find out ways and means of controlling and combating this menace of receipt and payment of dowry. It appears that instead of controlling payment and receipt of dowry in one or other form, it is increasing even in educated class. May be that, it is increasing because of accumulation of unaccounted wealth with few and others having less means follow the same out of compulsion.

In the present case, Ms. Neeta was married on 10th March, 1988 with appellant Vikas son of Shripatlal Doshi, resident of Banswara Rajasthan. Her dead body was found in the river on 1st July, 1990. Appellant Vikas, along

A with his mother, father and sisters, was prosecuted for the offences punishable under Sections 498, 364, 302, 302 r/w 120-B IPC. Additional Sessions Judge, Banswara by judgment and order dated 1st August, 1997 (1) convicted the appellant Vikas for the offences punishable under Sections 364, 302, 498-A and 304-B of IPC; (2) convicted Shripat (father), Sohanbai (mother) for the offences punishable under Sections 498-A and 304-B IPC; (3) however, acquitted sisters of the appellant, Jyoti and Yojna by giving benefit of doubt. Against that judgment and order, convicted accused preferred Criminal Appeal No.374 of 1997 before the High Court of Rajasthan at Jodhpur. By judgment and order dated 18th April, 2000, the High Court partly allowed the appeal and convicted the appellant Vikas for the offence punishable under Section 302 IPC and maintained the sentence of imprisonment for life. The Court also maintained the conviction of Vikas, Shripat and Sohanbai for the offence punishable under Section 498-A IPC, however, reduced the sentence to the period they had already undergone. The conviction of Vikas, Shripat and Sohanbai for the offence punishable under Section 304-B IPC has been set aside and they have been acquitted for the said offence. The Court also set aside the conviction of the appellant for the offence punishable under Section 364 IPC.

It is alleged by the prosecution that the accused persons were not satisfied with the dowry brought by Ms. Neeta. Therefore, she was being ill-treated and tortured. She gave birth to a female child at her parents house. On 28th June, 1990 at about 7.00 pm when Ms. Neeta was at the residence of PW3 Smt. Kamla Bai (father's sister), Vikas went there and they went out on a motor bike. On the next morning PW10 Sanjiv was sent by his parents to the house of appellant Vikas for delivery of medicines to Ms. Neeta. At that time, Vikas was sitting in the shop and he refused to accept the medicines saying that Ms. Neeta is not at the residence. Sanjiv returned to the house and disclosed this fact to his father.

A search for Neeta was carried out, but it did not yield any result, therefore, FIR Ex.P/4 was lodged by PW9 Narendra Lal on 29.6.1990 at Police Station Banswara. It was mentioned in the FIR that on 26.6.1990 deceased Neeta came to his house on account of demand of TV being made by the appellant and four others. They were harassing her for want of dowry. On 28th June, 1990, Neeta had gone to the house of Smt. Kamla Bai PW3. Vikas came there with minor child at about 7 p.m. Neeta went outside the house and thereafter within three minutes, she came back and told her aunt Smt, Kamla Bai that Vikas had come to take her. Vikas took her on the 'vicky'. Next day, she did not return. PW10 Sanjiv (his son) went to the house of the appellant

to give medicines to his sister Neeta. Appellant informed him that Neeta had not come there and they have not seen Neeta for the last four days. It was further mentioned that on 24.6.1990 when Neeta was being taken towards Garia Khandu Colony on the way one known person met them and appellant dropped her back at his residence. It was also mentioned that they had searched for Neeta but it was of no avail. The informant expressed his suspicion against Vikas and his family members. Hence, a case was registered under Sections 364/498-A IPC by the police against Vikas, his father, mother and two married sisters.

Police started the investigation and at the instance of appellant dead body of Neeta was recovered at a distance of 1 km. from Gemmon bridge. The investigating officer also recovered ornaments of Neeta at the instance of Vikas, which were put on by Neeta when she had gone at the house of PW3 Smt. Kamla Bai, from the house of the appellant and which were kept in a safe in almirah in the room of Vikas. After completing the necessary investigation, the accused were charge-sheeted, tried and convicted as stated above.

The High Court after appreciating the evidence in detail, relied upon the circumstantial evidence, namely, (1) last seen in the company of accused Vikas; (2) recovery of the dead body at the instance of Vikas; (3) recovery of ornaments of Neeta which were put on by her when she was at the house of PW3; and (4) appellant did not report to anybody about the missing of his wife and made a false statement to the extent that he has not seen Neeta for the last four days.

Mr. U.N. Bhachawat, learned senior counsel appearing for the appellant took us through the entire evidence and submitted that for arriving at the conclusion that the said circumstances are proved, the High Court relied upon the evidence of PW3 Smt. Kamla Bai, PW12 Het Kunwar, mother of the deceased, PW4 Rohit Doshi, PW10 Sanjiv, brother of the deceased and also on the evidence of PW18 Narender Mohan Sharma, Dy. S.P., who speaks about the recovery of the dead-body at the instance of accused. It is his contention that the High Court has omitted to consider material part of evidence and misread the same and omitted to consider material contradictions. It is his submission that when deceased was driven out of the house, there was no necessity of accused going to the house of Smt. Kamla Bai for bringing her back to his house. He also contended that there is nothing on record to establish on what basis appellant had gone to the house of Smt.

A Kamla Bai for picking up deceased. With regard to the 'last seen together', learned senior counsel submitted that there is no evidence on record that 'vicky' used by the accused was in working condition and that it belonged to the accused. He also submitted that the recovery of various articles at the instance of accused is not at all reliable.

B From the evidence brought on record, it is not possible to arrive at the conclusion that the High Court has committed any error in appreciating the evidence adduced in proof of circumstances connecting the accused with the crime. Even though, it is not necessary to re-appreciate the evidence, we would in short refer to what has been stated by the witnesses. It is the say of PW3 Smt. Kamla Bai that Neeta used to come to her residence and was weeping and informing about the demand of dowry. She was driven out of her house by her in-laws. Thereafter, a baby girl was born to her. It is her further say that due to death of one Jitendra Lal, Neeta had gone there for condolence and came to her house. Neeta's mother had also gone to the house of Jitendra Lal. At about 6 to 7 p.m., Vikas came to her house on his 'vicky' along with his daughter. He called Neeta by signal. Neeta went out and met him. Thereafter, Neeta told her that her husband was taking her along with him and then they went on 'vicky' towards Mahalaxmi Chowk. After sometime, Neeta's mother also came to her house and she informed her that Neeta had been taken away by her husband. It is her say that on the next day when some medicines were to be given to Neeta and when Neeta was not found at her house, Shripat (father of appellant) came in the lane, where people had collected. She informed Shripat that her son had taken away Neeta but Shripat denied. After 3-4 days, at the instance of Vikas, Neeta's dead-body was found near Gemmon bridge. She was shown ornaments, which Neeta was wearing when she went along with Vikas. She identified said ornaments before the Magistrate. In the cross-examination, nothing material has been found so as to disbelieve the version given by her before the Court. Suggestion was made about Neeta having some disease which was denied by her. No doubt, she admitted that medicines for tension were brought from Ahmedabad. The aforesaid version by Smt. Kamla Bai gets corroboration from the evidence of PW4 Rohit Doshi who has stated that at about 6.30 in the evening he was sitting in the house of his grandmother Smt. Kamla Bai. Vikas came there on 'vicky' along with his daughter. He called Neeta by signal. Neeta went there and after three minutes, she came back and said that her husband has come to take her. Thereafter, Vikas took Neeta and went away. In cross-examination, he stated that he saw Vikas crossing Mahalaxmi Temple

and on that very route, there is house of Neeta's father.

Further, PW12 Smt. Het Kunwar mother of the deceased has stated that after seven days of the marriage, her daughter Neeta was turned out of the house by Sohan Bai, Jyoti, Dalda, Vikas and Shripat saying that her parents have not given anything in dowry. After 1-months of stay of Neeta at her house, her husband Narendra, Bhagwati Lal and others took Neeta to her in-laws house. Thereafter, again after 1½ months, her daughter was sent back to her house by making demand of dowry. Again after 15 days, Neeta was sent back to in-laws house. She talks about the payment of some amount to Vikas and others which we are not required to discuss here. It is also her say that on the day of incident, her daughter had gone at Smt. Kamla Bai's house and from there Neeta was taken away by Vikas as narrated by Smt. Kamla Bai, PW3 and Rohit Doshi, PW4. In our view, there is no reason to discard this evidence. PW6 Mahesh Chander and PW7 Bhagwati Lal Doshi have also supported the prosecution version of torture of the deceased by the accused for non-fulfillment of dowry demand and that Neeta was turned out from her in-laws house. Apart from the aforesaid evidence, PW1 Pankaj, who turned hostile, also admitted in the cross-examination that on 28.6.1990 he saw accused Vikas taking his wife on his 'vicky'. Further, as per the evidence of PW10 Sanjiv, when he went to the house of accused for delivering medicines to Neeta, Vikas who was sitting in the shop informed him that Neeta was not at his residence.

In our view, it is difficult to hold that High Court or trial Court committed any error in relying upon the aforesaid evidence for arriving at the conclusion that appellant had taken away Neeta from the house of Smt. Kamla Bai and thereafter on the next day morning when Sanjiv PW10, brother of Neeta went at the house of appellant, Neeta was not found and a false statement was made by Vikas that he had not taken away Neeta with him.

For recovery of the dead-body also, it has come on record that it was recovered at the instance of Vikas on the basis of his disclosure statement while he was in custody, which is proved by the evidence of PW18 Narendra Mohan, Dy. S.P., Banswara, who has stated that accused Vikas led the police party to Gemmon bridge. He pointed out the place from where he pushed Neeta in the river and they found the dead-body at a distance of 1 km. At that time also, Vikas admitted that dead-body which was found from the river was that of Neeta. This discovery of the dead-body at the instance of

A accused is most relevant circumstance in the present case.

B Post-mortem examination report is proved by PW14 Dr. Vijay Kumar Mehta who was one Member of the Medical Board constituted for carrying out the post-mortem. According to him, the dead-body was fully decomposed; the tongue was hanging out of the mouth and eyes were protruding out; 7th cervical vertebra was broken; there was injury on the spinal cord and membrane thereon, where blood was clotted and the injury was sufficient to cause death in the ordinary course of nature. At the same time, she died due to drowning in water.

C Similarly, at the instance of accused ornaments were found in the safe of almirah from his room. PW8 Ravi Chaudhary has proved the recovery of a chain, three finger rings, one pair of ear tops from one almirah and one saree from another almirah from the sealed room of the house of accused Vikas. PW11 Vijay Kumar Vyas, Munsif and Judicial Magistrate, Banswara has
D deposed about the identification of the ornaments by PW3 Smt. Kamla Bai and PW10 Sanjiv. Further, the High Court has rightly relied upon the recovery of golden chain, which Neeta was wearing when she had gone to the house of Smt. Kamla Bai. The said article was recovered at the instance of accused from his house. This incriminating circumstance certainly points out the guilt of the accused otherwise the golden chain would not have been found from
E the almirah but it would have been on the dead body. From the aforesaid evidence, it is clear that there is no substance in the contention raised by the learned senior counsel for the appellant that there are material contradictions in the evidence of prosecution witnesses. In our view, except some minor variations the prosecution story is cogent and consistent with regard to
F demand of dowry and deceased Neeta accompanying her husband on the fateful day. Further, as there is evidence on record that accused came to the house of Smt. Kamla Bai on 'vicky' and was seen by other witnesses riding the said motor bike, it was not necessary for the prosecution to prove that accused was owner of the 'vicky' used by him. In the FIR lodged on 29th
G also, same story is stated. The submission of the learned senior counsel for the appellant that there was no reason for appellant to go to the house of PW3 for picking up deceased when she was driven out as stated by the prosecution witnesses requires no consideration because it is apparent from the evidence on record that Neeta's parents were keen to maintain the matrimonial relations. Even though she was driven out on two to three
H occasions, she was again sent back by her parents to her matrimonial house.

This keenness on the part of the parents to see that their daughter resides at her in-laws house peacefully has led to this incident. The High Court has also rightly relied upon the circumstance that accused made a false statement on the next day, when PW10 Sanjiv went to his house for giving medicines to Neeta. A

In this view of the matter, in our view, there is no substance in this appeal and is, therefore, dismissed. B

S.K.S. ●

Appeal dismissed.