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DHARAM CHAND

v.

STATE OF PUNJAB & ORS.

(Criminal Appeal No. 1731 of 2008)

B

NOVEMBER 5, 2008

**[C.K. THAKKER AND D.K. JAIN, JJ.]**

*Penal Code, 1860; S.304 B:*

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*Dowry death – Wife has been harassed by husband and family members for demand of more and more dowry – They allegedly killed her by burning – F.I.R. – Trial Court found accused husband, his mother, two brothers and sister guilty of killing her and sentenced them to undergo rigorous imprisonment for seven years – Acquitting brothers and sister*

D

*of accused husband, High Court confirmed conviction against accused husband and his mother but released accused husband on ground that he had already undergone imprisonment in terms of State Government's order on remission of sentence in certain cases – Correctness of –*

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*Held: High Court was right in acquitting accused brothers and sister of the accused husband of the deceased giving them benefit of doubt as they were living separately – On facts, it infers from the Affidavit submitted by the State that accused husband was treated as having undergone imprisonment for*

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*seven years by way of remission of sentence in terms of an order of the State Government to that effect – However, in terms of the order, remission could not be granted to an accused of dowry death – Hence, accused husband and his mother, in case benefit of remission has also been granted*

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*to her, directed to surrender to custody and undergo remaining sentence in terms of order of the trial Court – Code of Criminal Procedure, 1973 – S.432 – Constitution of India, 1950 – Article 161 – Remission of sentence – Grant of – Power of State Government.*

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According to the prosecution, respondent No.2, in collusion with his family members, was harassing his wife for demand of more and more dowry. They allegedly burnt her alive causing her death. Appellant, brother of the deceased, lodged an FIR in the Police Station and the Police arrested the accused husband, A1, his mother, A2, two brothers, A3 and A4, and sister, A5 for committing the offence punishable under s.304B IPC and, after investigation, submitted the charge-sheet. The Trial Court found all the accused persons guilty of committing the offence punishable u/s.304B IPC and sentenced them to undergo rigorous imprisonment for seven years and to pay fine. Aggrieved by the order of the trial Court, all the accused persons preferred appeals. High Courts acquitted the accused brothers and sister of the accused husband, viz. A3, A4 and A5 giving them benefit of doubt, as they were living separately from accused Nos. 1 and 2 and also released accused-husband observing that he had already undergone imprisonment as sentenced by the trial Court. Hence the present appeal.

Partly allowing the appeal, the Court

HELD: 1.1. So far as acquittal of accused Nos. 3 to 5 is concerned, on re-appreciation of evidence, the High Court rightly held that since they were staying separately, it could not be proved beyond reasonable doubt that they were also party to the act in question and hence benefit of doubt could be given to them. [Para 15] [465-A, B]

1.2. The High Court was right in dismissing the appeal filed by accused No.1-husband and accused No.2-mother-in-law of deceased and in confirming the order of conviction and sentence. [Para 17] [465-C, D]

2.1. The High Court was wrong in observing that the respondent No. 2, accused No. 1, husband of the deceased had already undergone the sentence. From the

A evidence, it is clear that the incident in question took  
place on March 14, 2000 and the High Court decided the  
matter on October 30, 2006. Hence, even if the first day,  
i.e. date of offence and the last day, i.e. the date of  
judgment by the High Court is taken, even then seven  
B years were not over. Seven years from the date of  
incident would be over only on March 13, 2007. [Para 18]  
[465-D-F]

2.2. In the affidavit filed on behalf of the State, it was  
stated that it was as per the Order dated August 14, 2002  
C issued by the Government of Punjab, Department of  
Home affairs and Justice (Jails Branch) that accused  
No.1 was treated as having undergone imprisonment for  
seven years. A copy of the said order was also produced  
along with the counter-affidavit. The Order was issued by  
D the Government of Punjab in exercise of power conferred  
by Section 432 of the Code of Criminal Procedure, 1973  
and Article 161 of the Constitution. Clause A of the said  
order provides for remission of sentence of imprisonment  
for life in certain cases. It is, however, expressly stated  
E that the benefits referred to in that part of the Order would  
not apply to certain cases including dowry death. Thus,  
it is clear that in case of dowry death, an offence  
punishable under Section 304B IPC, the benefit of  
remission of Government Order does not apply. If it is so,  
F the benefit could not be granted to the accused husband.  
Hence, even if accused No.1 or accused No.2 had been  
released before completion of seven years, such action  
could not be said to be legal and lawful. For the foregoing  
reasons, the appeal deserves to be partly allowed and is  
G allowed by directing accused husband to surrender to  
custody and to remain in jail for a period of seven years  
which he had to undergo as per the order of the trial  
Court. If such benefit is granted to accused No. 2, she  
also has to surrender to custody till the period of seven  
years is over. [Paras 20, 21, 22 & 23] [466-D-F; 467-A-D]

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal A  
No. 1731 of 2008.

From the final Judgment and Order dated 31.10.2006 of  
the High Court of Punjab and Haryana at Chandigarh in Criminal B  
Appeal Nos. 992-SB and 1012-SB of 2002.

K.K. Khurana, A.A.G., Brijendra Chahar, Ashok K.  
Mahajan, Rajat Sharma, Dinesh Verma, Dr. Kailash Chand,  
Shikha Roy Pabbi, K.R. Anand, Ajit Kumar, S. Sabharwal, B.R.  
Sharma, Subramonium Prasad, A.K. Mehta and Kuldeep Singh, C  
for the appearing parties.

The Judgment of the Court was delivered by

**C.K. THAKKER, J.** 1. Leave granted.

2. The present appeal is filed by the complainant, brother D  
of deceased Anju Devi against the judgment and order dated  
October 31, 2006 by the High Court of Punjab & Haryana in  
Criminal Appeal Nos. 992-SB of 2002 and 1012-SB of 2002.  
By the impugned judgment, the High Court allowed the appeal E  
No. 1012-SB/2002 filed by Vinod and partly allowed the appeal  
No. 992-SB/2002 filed by other accused and acquitted some  
of the respondents-accused for offences with which they were  
charged reversing the order of conviction recorded by the trial  
Court.

3. The case of the prosecution in short is that the appellant F  
herein, a de facto complainant is brother of one Anju Devi  
(‘deceased’ for short). According to the appellant, his sister Anju  
Devi got married to Accused No. 1, Jolly Singla on May 18,  
1997. Accused No. 2 Reshma Devi is mother in law of G  
deceased Anju Devi. Accused No. 3 Rajesh and accused No.  
4 Vinod are brothers of accused No. 1 Jolly Singla and accused  
No. 5 Kiran is wife of accused No. 3-Rajesh.

4. It was the case of the prosecution that at the time of H  
marriage, the parents of the deceased Anju Devi spent an

A amount of Rs.3,50,000/-. They also paid substantial amount of dowry to the accused. Anju Devi delivered a female child Diksha who was about two years of age at the time of incident. The allegation of the prosecution was that immediately after marriage of Anju Devi, her in-laws were harassing Anju Devi  
B by making demands of dowry. At several occasions, deceased Anju Devi made complaints about such demands. It was stated that though substantial amount was paid by the parents of deceased Anju Devi, her in-laws were insisting for more and more amount. They were also demanding scooter, colour  
C television, etc. As per the prosecution, parents of Anju Devi had assured in-laws of Anju Devi that their demands will be steadily met with but they should wait for some time considering the capacity of parents of Anju Devi.

D 5. It is alleged by the prosecution that on March 14, 2000, at about 9.00 a.m., deceased Anju Devi telephoned the appellant (her brother) that accused were harassing her and giving her beatings and were asking her to leave matrimonial home. Such cruel treatment and demand for dowry was made by all the accused. According to the appellant, he came along  
E with his brother Jai Bhagwan, Sarpanch Harbans Singh and some other people to persuade the in-laws of deceased Anju Devi, but when they reached at the house of the accused, they found dead body of deceased Anju Devi lying burnt in bath room. First Information Report was lodged being FIR No. 81  
F under Section 304B of the Indian Penal Code, 1860 (IPC).

6. The accused were arrested. Usual investigation was made and charge was framed. The accused pleaded not guilty to the charge and claimed to be tried.

G 7. The Additional Sessions Judge, Patiala in Sessions Case No. 16 of 2000 decided on June 13, 2002 held that it was proved by the prosecution that the deceased died homicidal death and all the accused were responsible for committing the said crime. They were heard on the question  
H of sentence and the Court ordered them to undergo rigorous

imprisonment for seven years and to pay fine of Rs.5,000/- each and in default, they were ordered to further undergo rigorous imprisonment for eight months.

8. Being aggrieved by the order of conviction and sentence, all the accused preferred appeals before the High Court. The High Court allowed the appeals filed by Rajesh, accused No. 3, Vinod, accused No. 4 and Kiran, accused No. 5 on the ground that they were residing separate from accused Nos. 1 and 2. It, however, dismissed the appeal filed by accused No. 1, Jolly Singla, husband of deceased Anju Devi and accused No. 2 Reshma Devi, mother in law of deceased Anju Devi. So far as respondent No. 1 Jolly Singla, accused No. 1-husband of deceased Anju Devi is concerned, the High Court observed that he had already undergone the imprisonment and was released. The said order is challenged by the complainant by filing the present appeal.

9. We have heard learned counsel for the parties.

10. The learned counsel for the appellant vehemently contended that the order of conviction and sentence recorded by the trial Court was in accordance with law and ought not to have been set aside by the High Court. It was also submitted that on the basis of the evidence adduced by the parties, the trial Court held that it was a case of homicidal death. The dead body of Anju Devi was found in the bath room. The trial Court was wholly right in observing that normally accidental fire takes place in a kitchen and not in a bath room. It was, therefore, held that it was not a case of accidental fire, but with intent to cause death, all the accused had committed the act in question. It was also submitted that from the evidence, it was clearly established that there was demand of dowry and deceased Anju Devi was harassed. The said fact was proved from sworn testimony of prosecution witnesses. The High Court was wholly in error in acquitting accused Nos. 3 to 5 who were convicted by the trial Court observing that they were staying separately which was factually incorrect. It was also submitted that once the incident

A was established and the High Court confirmed the finding of  
guilt against the mother in law as well as husband of Anju Devi,  
there was no reason to interfere with the order of conviction in  
respect of other accused. It was, therefore, submitted that the  
B appeal deserves to be allowed by restoring the order of  
conviction and sentence recorded by the trial Court.

11. The learned counsel for the respondents, on the other  
hand, submitted that reasons recorded by the High Court for  
acquitting accused Nos. 3 to 5 cannot be said to be illegal nor  
were based on irrelevant or extraneous grounds. And hence,  
C even if this Court feels that two views are possible, a view which  
favours the accused rather than which goes against them,  
should be adopted. When the appellate Court on re-  
appreciation of evidence extended benefit of doubt in favour  
of three accused, it cannot be said that by taking such view,  
D the High Court had not acted legally or reasonably. It was,  
therefore, submitted that to that extent, the order of the High  
Court needs no interference.

12. So far as conviction of Jolly Singla-accused No.1,  
E husband of deceased Anju Devi and Reshma Devi, mother-in-  
law of Anju Devi are concerned, the High Court has confirmed  
their conviction and there is no appeal on their behalf. The  
question with regard to their conviction and sentence is not the  
subject matter before this Court.

F 13. As far as respondent No. 1 Jolly Singla, husband of  
deceased Anju Devi is concerned, the High Court stated that  
he has already undergone the sentence and hence, the appeal  
so far as accused No. 1 is concerned, had virtually become  
G infructuous. It was, therefore, submitted that the present appeal  
deserves to be dismissed.

14. The learned counsel for the State also supported the  
order passed by the High Court.

H 15. Having heard the learned counsel for the parties, in our

opinion, the appeal deserves to be partly allowed. So far as acquittal of accused Nos. 3 to 5 is concerned, in our view, the learned counsel for the respondents is right in submitting that on re-appreciation of evidence, the High Court held that since they were staying separately, it could not be proved beyond reasonable doubt that they were also party to the act in question and hence benefit of doubt was given to them.

16. We see no infirmity in the reasoning of the High Court as also the conclusion arrived at. We, therefore, see no ground to interfere with that part of the order of acquittal recorded by the High Court so far accused Nos. 3 to 5 is concerned.

17. The High Court, in our opinion, was right in dismissing the appeal filed by accused No.1-husband and accused No.2-mother-in-law of deceased Anju Devi and in confirming the order of conviction and sentence.

18. In our opinion, however, the High Court was wrong in observing that the respondent No. 1 herein (accused No. 1) husband of Anju Devi had already undergone the sentence. From the evidence, it is clear that the incident in question took place on March 14, 2000 and the High Court decided the matter on October 30, 2006. Hence, even if we take the first day, i.e. date of offence and the last day, i.e. the date of judgment by the High Court, even then seven years were not over. Seven years from the date of incident would be over only on March 13, 2007.

19. The High Court, in the impugned judgment, observed as under;

"From the above discussion, I am of the view that prosecution case against accused-appellants Vinod, Rajesh and Kiran for the offence under Section 304-B IPC is not proved beyond doubt. They are entitled to acquittal and are acquitted. Jolly Singla happens to be husband and Reshma Devi is mother-in-law of the deceased. They were

A residing together with Anju, deceased. Appeal filed by them is dismissed. *Jolly Singla is stated to have already undergone imprisonment and released*".

(emphasis supplied)

B 20. From the above observations, it is clear that before the High Court, it was "stated" on behalf of the husband that he had already undergone the imprisonment and was released. When we asked the learned counsel for respondent No. 1 as to how the High Court recorded the above finding, he could not give  
C satisfactory reply on what basis it was *stated* before the High Court that accused No. 1-husband had *already* undergone imprisonment and was released. We, therefore, asked the learned advocate for the State of Punjab to file an affidavit stating the basis of the statement and release of accused No.1.  
D Such affidavit was filed on behalf of the State and the learned Government Pleader stated that it was as per the Order dated August 14, 2002 issued by the Government of Punjab, Department of Home affairs and Justice (Jails Branch) that accused No. 1 was treated as having undergone imprisonment  
E for seven years. A copy of the said order was also produced along with the counter-affidavit.

21. The Order was issued by the Government of Punjab in exercise of power conferred by Section 432 of the Code of Criminal Procedure, 1973 and Article 161 of the Constitution.  
F Clause A provides for remission of sentence of imprisonment for life in certain cases. It is, however, expressly stated that the benefits referred to in that part of the Order would not apply to certain cases. The said head reads thus;

G "*These benefits are not admissible in the following cases*".

Sub-clause (vii) of that part deals with offences under  
Section 304B, IPC, i.e. a dowry death.

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22. It is, therefore, clear that in case of dowry death, an offence punishable under Section 304B, IPC, the benefit of remission of Government Order does not apply. If it is so, in our opinion, the benefit could not be granted to respondent No. 1—husband. Hence, even if accused No.1 or accused No.2 had been released before completion of seven years, such action could not be said to be legal and lawful. If it is so, obviously, the appeal deserves to be allowed to that extent.

23. For the foregoing reasons, the appeal deserves to be partly allowed and is allowed by directing respondent No. 1 Jolly Singla to surrender to custody and to remain in jail for a period of seven years which he has to undergo as per the order of the trial Court. If such benefit is granted to accused No. 2, she also had to surrender to custody till the period of seven years is over.

24. The appeal is accordingly allowed to the above extent.

S.K.S.

Appeal Partly allowed.