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DEEN DAYAL & ORS.
v.
STATE OF U.P.
(Criminal Appeal No. 67 of 2006)

JANUARY 07, 2009

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[LOKESHWAR SINGH PANTA AND AFTAB ALAM, JJ.]

Penal Code, 1860: s.498-A, and 304-B – Dowry death – Woman found dead in well – Two injuries found, one on her nose and other in parietal area of the head, which could not be caused in course of fall into the water – Doctor was definite that two injuries were the result of two separate blows by some hard and blunt substance – Evidence of witness show that soon before her death, she was subjected to cruelty and harassment by her husband and in laws due to non fulfilment of dowry demand – Held: Husband and in laws guilty under ss.498-A s.304-B – Crime against woman.

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Evidence – Reading of – Held: To be read as a whole and not by plucking out one or two sentences from here and there.

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Prosecution case was that on 6.9.1998, deceased was killed by the appellants who were husband and in-laws and her dead body was thrown in well near the house of the appellants. The doctors' report was that cause of death was not by drowning and was due to coma resulting from head injury, which was possibly caused by some blunt weapons. The trial court acquitted the appellants. On appeal, High Court convicted the appellants under ss.498A and 304B IPC.

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In appeal to this Court, the appellants contended that the deceased slipped into the well accidentally and smashed her head against the wall of the well; that there

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was no evidence of demand for dowry by the appellants or her being subjected to cruelty or harassment by the appellants for or in connection with the demand for dowry and that too soon before her death. In support of the submission that the appellants did not make any demand for dowry, the appellant placed reliance on certain sentences picked up from the evidence of PW 1, the father of the deceased. Appellant referred to two sentences from the statement of PW 1 in reply to the court's questions where he said that no dowry was decided at the time of the marriage and then pointed out two or three sentences from his cross examination where he said that there was no talk of dowry at the time of engagement and marriage of his daughter.

Dismissing the appeal, the Court

HELD: 1. The contention of appellants that in course of her fall in the deep well (water surface in the well was at a depth of 60-70 ft.), deceased might have smashed her head against the wall of the well and as a result she went into coma even before hitting the water surface, is not acceptable. According to the investigating officer, the mouth of the well was half covered by wooden planks and a pulley was fixed over the other open half for pulling up the filled up bucket. With that kind of arrangement it was highly unlikely for a person to slip and fall down in the well. But even assuming that such an accident took place, no injuries as found on the person of deceased could be caused in course of the fall into the water. The investigating officer described the well in question as a kuccha well, that is to say its inner walls were not brick lined. Deceased had suffered two injuries, one over her nose and the other in the parietal area of the head. The doctor was quite definite that the two injuries were the result of two separate blows by some hard and blunt substance. In cross examination, he said that the two

A injuries could be caused by dashing against two different projections; those could not be caused by a single projection. It is unlikely that deceased fell down inside the well and getting her face and head smashed twice against two projections jutting out from the soft clay inner walls B without any lining of bricks. There is no manner of doubt that deceased was first beaten and then her body was dumped into the well when she was dying or was already dead. [Para 6] [64-C-H; 65-A]

C 2. The witness examined by defence stated that the appellants kept deceased with great love and affection and further that she died due to an accidental fall into the well, and that he himself saw her slipping while bending down to pull up the bucket full of water and falling into the well head downwards. The evidence of this witness D has no value. As a matter of fact the defence witness did not make any statement before the investigating officer and was examined for the first time before the trial court. It also appears from the materials on record that the appellants' village where the occurrence took place E belonged to the people of one and the same caste. During investigation, the co-villagers tried to conceal the facts and no one was prepared to give any statement against the appellants. Thus, on the evidence on record, it is fully established that only after fifteen months of her F marriage and while she was living with the appellants, deceased died under circumstances that were not only far from normal but also plainly indicated homicide. [Paras 7 and 8] [65-B-E]

G 3.1. The evidence of the witness has to be taken as a whole and not by plucking out one or two sentences from here and there. In his examination-in-chief PW 1 clearly stated that in the marriage of his daughter he gave dowry according to his capacity but the members of the bridegroom side were not satisfied. Deceased's husband-

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appellant No.3, father-in-law appellant No.1 and mother-in-law appellant No.2 used to demand Rs.10,000/ – and a chain of gold in addition to what was already given by him. They made the demand from him. They also made the demand of dowry from his son when he went to their place for bringing back deceased. The appellant used to beat and abuse deceased for the sake of dowry. When deceased used to come to their house she would tell that her in-laws demanded Rs.10,000/ – and a chain of gold and if the money and the chain were not given then they would arrange a second marriage of their son. [Para 10] [66-C-G]

3.2. PW-1 indeed said that at the time of marriage no dowry was decided and the father-in-law of his daughter said that he would be happy with whatever they gave. But in the very next sentence he said that after six days of marriage they brought back deceased from her matrimonial home and then his daughter told that her mother-in-law was beating her and demanding Rs. 10, 000/-. PW1 further said that after three to four months of marriage he went to the matrimonial home of her daughter. He told them (the appellants) not to make (any further) demand of dowry as he was not in a position to give them anything. But the father-in-law of his daughter told him that they would not keep his daughter in their house. Similarly, in his cross-examination he said that there was no talk of dowry either at the time of engagement or at the time of solemnization of marriage and the appellants took his daughter happily but again the next sentence was that at the time of departure father-in-law had refused to take food and he demanded dowry. The deposition of PW 1 was full of the assertion about the appellants demanding Rs.10,000/ – and a gold chain in dowry and subjecting her daughter to cruelty and harassment due to non fulfilment of their demand. [Para 11] [67-A-E]

A 3.3. The evidences of PW 2 and PW 5, the brother and the mother respectively of the deceased also leave no room for doubt in regard to the demand of dowry by the appellants and their subjecting deceased to cruelty and harassment in connection with the demand. From the B prosecution evidence, the picture comes out vivid and clear that in addition to what was given to them the appellants demanded Rs.10,000/ – and a gold chain. The evidence on record fully establishes that there was a persistent demand of dowry by the appellants and they C subjected deceased to cruelty and harassment in connection with the demand and eventually beat her to death due to its non-fulfilment. [Para 12] [67-E-F; 68-B-C]

4. The words 'soon before her death' occurring in s.304-B IPC are to be understood in a relative and flexible D sense. Those words cannot be construed as laying down a rigid period of time to be mechanically applied in each case. Whether or not the cruelty or harassment meted out to the victim for or in connection with the demand of dowry was soon before her death and the proximate E cause of her death, under abnormal circumstances, would depend upon the facts of each case. There can be no fixed period of time in this regard. From the evidence on record, it is clear that there was an unrelenting demand for dowry and deceased was persistently F subjected to cruelty and harassment for and in connection with the demand. Both her parents and her brother deposed before the court that appellant no.1 once again raised his demand when he had gone to their house in July 1998 to bring deceased to his place. Their G inability to meet his demand caused him annoyance and anger. Deceased was naturally apprehensive and was very reluctant to go with him. But they somehow prevailed upon her and made her depart with him. There is thus direct and positive evidence of her being

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subjected to harassment. There is nothing to show that after she was brought to the appellants' place and till her death merely about two months later the situation had radically changed, the demand of dowry had ceased and relations had become cordial between the deceased and the three appellants. In the facts and circumstances of the case, deceased was subjected to cruelty in connection with the appellants' demand for dowry and that was the proximate cause of her homicidal death. All the ingredients of s.304-B IPC are fully satisfied and on the evidence on record no other view is possible but to hold that the three appellants are guilty of committing dowry death. [Para 15] [68-G-H; 69-A-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 67 of 2006.

From the final Judgment and Order dated 21.9.2005 of the High Court of Judicature at Allahabad in Government Appeal No. 2998 of 2001.

Dr. J.N. Dubey, Anurag Dubey, Meenesh Dubey, Anu Sawhney, S.K. Diwakar, D.P. Pandey and S.R. Setia for the Appellants.

Pramod Swarup, Sahdev Singh and Anuvrat Sharma for the Respondent.

The Judgment of the Court was delivered by

AFTAB ALAM, J. 1. This appeal under Section 379 of Code of Criminal Procedure, 1973 read with Section 2(A) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 is at the instance of three appellants. Amar Singh, appellant no.3, is the son of Deen Dayal, appellant no.1 and Smt. Sukhrani, appellant no.2. They were tried for killing Asha Devi, wife of appellant no.3 for non fulfilment of their demand for dowry and were charged under sections 498-A and 304-B, alternatively section 302 of the Penal Code. At the

A conclusion of the trial they were acquitted of the charges by the 4th Additional Session Judge, vide judgment and order dated April 30, 2001 in Sessions Trial no.740 of 1998. Against the judgment of acquittal passed by the trial court the State of U.P. preferred an appeal before the High Court that was B registered as Govt. Appeal no.2998 of 2001. A Division Bench of the High Court found and held that in the face of prosecution evidence the conclusion arrived at by the trial court was wholly untenable. Accordingly, the High Court allowed the appeal, set aside the Judgment of acquittal passed by the trial court and C by judgment and order dated September 21, 2005 convicted all the three appellants under sections 498-A and 304-B of the Penal Code and sentenced them to undergo rigorous imprisonment for three years and ten years respectively for the two offences subject to the direction that the two sentences D would run concurrently. The judgment and order passed by the High Court is brought under appeal to this court by the three appellants.

2. Dr. J. N. Dubey learned senior counsel made long and elaborate submissions in support of the appeal. Learned E counsel first contended that in a criminal case the scope of an appeal against acquittal is quite different from an appeal against conviction and sentence. In the former case, if the trial court has taken one of the two possible views the judgment of acquittal would not warrant any interference in appeal. Counsel F further submitted that the present case fell under that category and the High Court was in error in interfering with the judgment of the trial court and substituting its own view in place of the view taken by trial court. Next, passing over to the merits of the case, Dr. Dubey submitted that on the evidence on record G several ingredients of the offence of dowry death remained unproved and since the prosecution failed to establish all the necessary conditions no presumption would arise against the appellants under Section 304-B of the Penal Code and Sec. 113-A of the Indian Evidence Act.

H 3. Before examining the submissions made on behalf of

the appellants in any detail it would be useful and proper to state certain facts of the case that are admitted or are in any event undeniable. Asha Devi, the deceased was married with appellant no.3 in June 1997. Fifteen months later she died on September 6, 1998. At the time of her death she was living with the appellants. Her dead body was taken out of a well situate at a distance of about four hundred paces from the house of the appellants. Here it must be stated that her death was not caused by drowning. According to the prosecution, Asha Devi was killed by the appellants and her dead body was thrown into the well. The appellants, however, have a different story. Their case is that she had gone to fetch water and while pulling up the pail of water she accidently slipped and fell down into the well and died.

4. At this stage we may take a look at the medical evidence. P. W.3, the doctor holding post-mortem on the dead body of Asha Devi found the following two injuries

1: Swelling 3 x 3 cm in front upper part of nose.

2: Swelling mark 5 x 5 cm on top and middle of head.

On internal examination he found the following injuries :

> "Left parietal bone of head was fractured. Membrane was soiled in blood. There was blood in brain. Bone of nose was fractured. There was 2 ounce clotted blood in nose. There was 2 ounce watery fluid in stomach".

He opined that death was caused due to coma resulting from head injury. He stated before the court that the injuries were possibly caused by some blunt weapon. He found no water in the lungs or the wind pipe. He further said that that if there was water in the well then those injuries couldn't possibly have been caused (by falling down into it). In cross-examination he said that both the injuries could be caused by dashing against two different projections; those could be not caused by a single

A projection. Under persistent cross-examination he further said that as a result of falling from a high place with mouth (Sic. face) facing downward injury no.1 could possibly be caused and injury no.2 could be caused by dashing against some stone.

B 5. The medical evidence thus fully corroborates the prosecution case that Asha Devi was thrown into the well when she was already dead or was dying. At any rate she had stopped breathing as indicated by the absence of any water in her lungs or windpipe.

C 6. In order to reconcile the defence case with the medical evidence Dr. Dubey came up with an explanation. Learned Counsel suggested that in course of her fall in the deep well (water surface in the well was at a depth of 60-70 ft.) Asha Devi might have smashed her head against the wall of the well and D as a result she went into coma even before hitting the water surface. We are totally unable to accept the submission. According to the investigating officer the mouth of the well was half covered by wooden planks and a pulley was fixed over the other open half for pulling up the filled up bucket. With that kind E of arrangement it is highly unlikely for a person to slip and fall down in the well. But even assuming that such an accident took place no injuries as found on the person of Asha Devi can be caused in course of the fall into the water. The investigating officer described the well in question as a kuccha well, that is F to say its inner walls were not brick lined. Asha Devi had suffered two injuries, one over her nose and the other in the parietal area of the head. The doctor was quite definite that the two injuries were the result of two separate blows by some hard and blunt substance. In cross examination he said that the two G injuries could be caused by dashing against two different projections; those could not caused by a single projection. We are completely unable to see Asha Devi falling down inside the well and getting her face and head smashed twice against two projections jutting out from the soft clay inner walls without any lining of bricks. We have no manner of doubt that Asha Devi

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was first beaten and then her body was dumped into the well when she was dying or was already dead.

7. Here, it may be stated that the defence also examined a witness. He of course said that the appellants kept Asha Devi with great love and affection and further that she died due to an accidental fall into the well. He himself saw her slipping while bending down to pull up the bucket full of water and falling into the well head downwards. The witness has no value in our eyes and Dr. Dubey too rightly did not even refer to his evidence. As a matter of fact the defence witness did not make any statement before the investigating officer and was examined for the first time before the trial court. It also appears from the materials on record that the appellants' village where the occurrence took place belonged to the people of one and the same caste. During investigation the co-villagers tried to conceal the facts and no one was prepared to give any statement against the appellants.

8. Thus on the evidence on record we find it fully established that only after fifteen months of her marriage and while she was living with the appellants Asha Devi died under circumstances that were not only far from normal but also plainly indicated homicide.

9. At this stage Dr. Dubey submitted that though Asha Devi might have died under abnormal circumstances within seven years of her marriage, there was no evidence of any demand for dowry by the appellants or her being subjected to cruelty or harassment by the appellants for or in connection with the demand for dowry. In any event, there was absolutely no evidence that any demand for dowry was made soon before her death on September 6, 1998 and the demand for dowry and the cruelty or harassment meted out to her in connection with the demand were the proximate cause of her death. In support of the submission that the appellants did not make any demand for dowry Dr. Dubey heavily relied on certain sentences picked out from the evidence of PW 1, the father of the

A deceased. Learned counsel referred to two sentences from the statement of PW 1 in reply to the court's questions where he said that no dowry was decided at the time of the marriage and appellant no.1 had said that he would be happy with whatever they gave. Learned counsel then pointed out two or three B sentences from his cross examination where he said that there was no talk of dowry at the time of engagement and marriage of his daughter; there was no talk of dowry at the time of solemnization of marriage (taking steps around the sacred fire). And that the appellants took his daughter happily and at the time C of departure also there was no talk (of dowry).

10. We find absolutely no substance in the submission. The evidence of the witness has to be taken as a whole and not by plucking out one or two sentences from here and there. In his examination-in-chief PW 1 clearly stated that in the marriage D of his daughter he gave dowry according to his capacity but the members of the bridegroom side were not satisfied. Asha Devi's husband Amar Singh (appellant No.3), father-in-law Deen Dayal (appellant No.1) and mother-in-law Sukhrani (appellant No.2) used to demand Rs.10, 000/ – and a chain of gold in E addition to what was already given by him. They had made the demand from him. They had also made the demand of dowry from his son when he went to their place for bringing back Asha Devi. The appellant used to beat and abuse her for the sake of dowry. When Asha Devi used to come to their house she would F tell them that her in-laws demanded Rs.10, 000/ – and a chain of gold and if the money and the chain were not given then they would arrange a second marriage of Amar Singh. In July 1998, Deen Dayal (appellant no. 3) had come to his house for taking his daughter. Then too he had demanded Rs.10, 000/ – and the G gold chain. He (the witness) had nothing to give; therefore, he could not give anything. Deen Dayal became annoyed and took away his daughter Asha Devi with him in angry mood.

11. Dr. Dubey has referred to two sentences in the statement of PW 1 in reply to the court questions. In reply to the H

court questions PW 1 indeed said that at the time of marriage no dowry was decided and the father-in-law of his daughter had said that he would be happy with whatever they gave. But in the very next sentence he said that after six days of marriage they brought back Asha Devi from her matrimonial home and then his daughter told them that his mother-in-law had been beating her and demanding Rs.10, 000/-. He further said that after three to four months of marriage he went to the matrimonial home of her daughter. He had told them (the appellants) not to make (any further) demand of dowry as he was not in a position to give them anything. But the father-in-law of his daughter told him that they would not keep his daughter in their house. Similarly, in his cross-examination he said that there was no talk of dowry either at the time of engagement or at the time of solemnization of marriage and the appellants took his daughter happily but again the next sentence is that at the time of departure Deen Dayal had refused to take food and he had demanded dowry. The deposition of PW 1 is full of the assertion about the appellants demanding rupees ten thousand and a gold chain in dowry and subjecting her daughter Asha Devi to cruelty and harassment due to non fulfilment of their demand.

12. Further, the evidences of PW 2 and PW 5, the brother and the mother respectively of the deceased, leave no room for doubt in regard to the demand of dowry by the appellants and their subjecting Asha Devi to cruelty and harassment in connection with the demand. From the prosecution evidence the picture comes out vivid and clear that in addition to what was given to them the appellants demanded Rs.10, 000/ – and a gold chain. PW 5 stated before the court as follows:

> "At the time of marriage, Amar Singh had demanded chain of gold for himself and rupees ten thousand for his father. After that the demand was repeated many times."

She further stated:

> "Two months before death of Asha Devi, Deen Dayal

A father-in-law of Asha Devi had come to our house for taking her. Deen Dayal had demanded chain of gold for his son and rupees ten thousand and he had asked to send Asha Devi. My daughter was not prepared to go. But we made her to comprehend and then she was sent. Deen Dayal B took Asha Devi with him in anger."

The evidence on record fully establishes that there was a persistent demand of dowry by the appellants and they subjected Asha Devi to cruelty and harassment in connection with the demand and eventually beat her to death due to its non-C fulfilment.

13. Dr. Dubey lastly contended that before any presumption may be drawn against the appellants it must be shown that they had made the demand for dowry and in that D connection subjected Asha Devi to cruelty and harassment 'soon before her death'. He submitted that according to the prosecution evidence the demand for dowry was last made in July 1998 when appellant no.1 had gone to bring Asha Devi from her parents' house and she died on September 6, 1998. E Thus, according to Dr Dubey, there was no evidence that she was subjected to any cruelty or harassment soon before her death and hence, there would be no application of Section 304-B of the Penal Code and no presumption could be raised against the appellants as provided under Section 113-A of the F Evidence Act. In support of the submission he relied upon a very large number of decisions but we see no need to refer to those decisions as in the facts of the case the submission appears to us to be completely unacceptable.

14. The words 'soon before her death' occurring in section G 304 B of the Penal Code are to be understood in a relative and flexible sense. Those words cannot be construed as laying down a rigid period of time to be mechanically applied in each case. Whether or not the cruelty or harassment meted out to the victim for or in connection with the demand of dowry was H soon before her death and the proximate cause of her death,

under abnormal circumstances, would depend upon the facts of each case. There can be no fixed period of time in this regard. From the evidence on record, it is clear that there was an unrelenting demand for dowry and Asha Devi was persistently subjected to cruelty and harassment for and in connection with the demand. Both her parents and her brother (PW 1, PW 5 and PW 2) deposed before the court that appellant no.1 had once again raised his demand when he had gone to their house in July 1998 to bring Asha Devi to his place. Their inability to meet his demand had caused him annoyance and anger. Asha Devi was naturally apprehensive and was very reluctant to go with him. But they somehow prevailed upon her and made her depart with him. There is thus direct and positive evidence of her being subjected to harassment. There is nothing to show that after she was brought to the appellants' place and till her death on September 6, 1998 merely about two months later the situation had radically changed, the demand of dowry had ceased and relations had become cordial between the deceased and the three appellants. In the facts and circumstances of the case, we are satisfied that in connection with the appellants' demand for dowry Asha Devi was subjected to cruelty and that was the proximate cause of her homicidal death.

15. We are satisfied that all the ingredients of Section 304-B of the Penal Code are fully satisfied and on the evidence on record no other view is possible but to hold that the three appellants are guilty of committing dowry death.

16. In view of the discussions made above, it follows that the view taken by the trial court was completely untenable and the High Court was fully justified in reversing its verdict in appeal preferred by the State. We thus find no merit and substance in any of the submissions made on behalf of the appellants. The appeal fails and is accordingly dismissed.

D.G. Appeal dismissed.