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RAKESH CHAND & ANR.

v.

STATE OF PUNJAB

(Criminal Appeal No. 282 of 2008)

AUGUST 11, 2010

B

**[HARJIT SINGH BEDI AND CHANDRAMAULI KR.
PRASAD, JJ.]**

Penal Code, 1860:

C *ss. 304-B and 201 – Dowry death – Conviction of
husband, mother-in-law and father-in-law of deceased by trial
court affirmed by High Court – HELD: The mother-in-law and
the father-in-law had no role in the demand made by the
husband soon before the death – Nor is there any evidence
making out a case against them u/s 201 – They are, therefore,
D acquitted.*

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 282 of 2008.

E From the Judgment & Order dated 29.01.2007 of the High
Court Punjab & Haryana at Chandigarh in Criminal Appeal No.
595 DB of 2005.

Rajeev Dutta, Ajay Veer Singh, Anisha Jain, Nitin Jain,
Uday Ram, Mohd. Irshad Hanif for the Appellant.

Kuldip Singh for the Respondent.

The following order of the Court was delivered

F

O R D E R

The facts are as under:

G Neelam Kumari and Anil Kumar were married on 4th
December 1998 and as per the prosecution story sufficient
dowry had been given to the accused at the time of the
marriage. They were however dissatisfied with what had been
given to them and in July 2000, a demand was made for
Rs.20,000/- for the purpose of buying a motor cycle or scooter.
As this demand was not satisfied Neelam Kumari was turned
H out up her matrimonial home although she was in an advanced

stage of pregnancy. A motor cycle was thereafter purchased for Anil Kumar. It is further the prosecution story that on 22nd April, 2003 Neelam Kumari and Anil Kumar visited Rajni Bala (PW.16), sister of Neelam Kumari, also a resident of village Ladda Kothi, where Neelam Kumari told her sister that her husband was now demanding Rs.50,000/- in order to construct a room in the □ house and was misbehaving with her as this amount was not being provided by her parents. As per the prosecution story Neelam Kumari's dead body was spotted on the embankment of a seepage drain in the area of Barnala by one Komal Singh on 25th April, 2003. A FIR was duly registered and after investigation a charge sheet was filed and a charge under Sections 302/34 and 201 and in the alternative 304-B/34 & 201 of the IPC was framed against Anil Kumar and his parents, the appellants herein.

The Trial Court relying on the evidence of Chunni Lal (PW.15), the father of the deceased, her mother Sudesh Kumari (PW.1) the complainant and Rajni Bala,, (PW.16) convicted all the accused for the offence punishable under Section 304-B and 201 of the IPC but acquitted them of the offence of murder and they were sentenced accordingly.

An appeal was thereafter taken to the High Court. The High Court confirmed the judgment of the Trial Court. A special leave petition was filed by the three accused but leave was granted qua the appellants only. We have accordingly heard this appeal today assisted by the learned counsel for the parties.

Mr. Rajeev Dutta, the learned senior counsel for the appellants, has pointed out that one of the essential ingredients of the offence under Section 304-B was that the demand for dowry had to be made soon before the death of the deceased. He has referred us to the evidence of Chunni Lal, Rajni Bala and Sudesh Kumari and pointed out that there were two sets of demands allegedly made by the accused; the first one in the year 2000 being a demand for Rs.20,000/- for the purpose of buying a motor cycle and there appeared no demand thereafter by the appellants as the demand for Rs.50,000/- had been made by Anil Kumar alone shortly before the death of Neelam

A Kumari and the appellants thus had no roll to play on this score. We find merit in this submission. In their examinations-in-chief, PW.1- Sudesh Kumari and PW.16-Rajni Bala have deposed that the demand for Rs.50,000/- had also been made by Rakesh Chand and Pushpa Devi. They were however
B confronted with their statements under Section 161 of the Cr.P.C. wherein no such details had been spelt out and the demand for Rs.50,000/- had been confined only to Anil Kumar. Likewise we have gone through the statement of Chunni Lal. Even in his examination-in-chief he very categorically stated
C that the demand for Rs.50,000/- had been made only by Anil Kumar and not by the two appellants. In the light of the fact that the only demand that could be foisted on the two appellant was of the year 2000, it could not be said that the appellants had made any demand soon before the death of the deceased so
D as to be liable for conviction under Section 304-B of the IPC.

Mr. Kuldeep Singh, the learned State counsel has however very vehemently argued that even if there was no evidence with respect to the offence under Section 304-B there was ample evidence to maintain the conviction of the appellants for the offence under Sec.201 of the IPC. In this connection he has
E referred us to the statement of PW.6 Dildar Khan who deposed that sometime before the 10th May 2003 he had seen Anil Kumar carrying something in a gunny bag on his motor cycle. This story is, in the facts, unacceptable. The incident happened on 24th April 2003 and Dildar Khan's vague statement that he
F had seen something amiss before 10th of May, 2003, is an absurdity and cannot be accepted. We accordingly feel that the conviction of the appellants was not justified on the evidence. We accordingly allow this appeal, set aside the judgment of the Trial Court and the High Court vis.a-vis. the two appellants
G herein and order their acquittal.

In the meantime, we direct that the appellant- Rakesh Chand, who is in custody, shall be released forthwith if not required in connection with any other case. As regards Pushpa Devi, her bail bonds shall stand discharged.

H R.P.

Appeal allowed.