

A KANCHANBEN PURSHOTTAMBHAI BHANDERI

v.

STATE OF GUJARAT

(Criminal Appeal No. 1152 of 2009)

DECEMBER 05, 2014.

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[M.Y. EQBAL AND SHIVA KIRTI SINGH, JJ.]

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*Penal Code 1860 – ss. 304B and 498A – Dowry death – Prosecution of husband, mother-in-law and father-in-law of the deceased – Acquittal of husband and father-in-law by courts below and conviction of mother-in-law – Held: Allegations of cruelty and demand of dowry by the mother-in-law, specifically proved by the material witnesses – In the facts of the case, she is not entitled to parity with other accused.*

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Dismissing the appeal, the Court

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**HELD: 1.** In view of evidence of material witnesses, the High Court has committed no error in appreciating the evidence for coming to the conclusion that allegations of torture as well as demand of articles by way of dowry against the appellant was clear, specific and stood proved. [Para 13] [227-D-F]

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*Satish Chandra and Anr. vs. State of Madhya Pradesh* 2014 (6) SCC 723 – relied on.

*Durga Prasad vs. State of M.P.* 2010 (9) SCC 74 – referred to.

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**2.** FIR should contain the essential features of the prosecution case but it cannot be expected to be an encyclopedia of whole prosecution case. It may be quite natural for a friend of the deceased such as PW 18 not to remember the exact figure which was disclosed by the

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deceased sometime back, as the amount demanded by the appellant mother-in-law. [Para 12] [227-A-C] A

3. On a careful perusal of the entire materials, it is found that the appellant cannot claim parity with the case of accused Nos. 1 or 3 who were acquitted by the High Court and by the Trial Court respectively. [Para 15] [228-E] B

*Hardial Singh vs. State of Punjab*, 1992 Suppl. (2) SCC 455 – referred to. C

4. However, ends of justice would be satisfactorily met by reducing the sentence of eight years RI for offences under Section 304B and 498A IPC to seven years RI. Other sentences shall remain the same. [Para 16] [228-G] D

*Satbir Singh vs. State of Punjab* 2001 (3) Suppl. SCR 353 = 2001(8) SCC 633 – referred to.

**Case Law Reference:**

2001 (3) Suppl. SCR 353	referred to	para 9	E
2010 (9) SCC 74	referred to	para 9	
1992 Suppl. (2) SCC 455	referred to	para 9	
2014 (6) SCC 723	relied on	para 12	F

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1152 of 2009.

From the Judgment & Order dated 21.01.2009 of the High Court of Gujarat at Ahmedabad in Criminal Appeal No. 120 of 2000. G

Meenakshi Arora, Rahul Narayan, Mohit Singh, Mahima, Vasav Anantharaman for the Appellant. H

A Jesal, Swati Vaibhav, Hemantika Wahi for the Respondent.

The Judgment of the Court was delivered by

B **SHIVA KIRTI SINGH, J.** 1. The sole appellant, Kanchanben is the mother-in-law of the deceased and is facing conviction under Section 304B and 498A of the Indian Penal Code (hereinafter referred to as IPC) with sentence of RI for eight years and penalty of Rs.1,000/- with default stipulation. She has also been convicted under Section 3 of the Dowry Prohibition Act with simple imprisonment for five years and penalty of Rs.3,000/- with default clause. For conviction under C Section 4 of the Dowry Prohibition Act, she has been inflicted with simple imprisonment of six months and penalty of Rs. 500/- . The sentences have to run concurrently.

D 2. For the offence in question in which the daughter-in-law of the appellant namely Hina died a suicidal death after consuming poison within seven months of her marriage with the son of the appellant, the Police chargesheeted three persons, accused No.1 Nilesh Kumar, who is the husband of the deceased, the appellant as accused No.2 and appellant's husband Purshattambhai as accused No.3. As per prosecution case, the marriage between the deceased and Nilesh was solemnized on 4.12.1997. She went from her parental house E at Surat to her matrimonial home at Vidyanagar which falls on the way from Surat to Ahmedabad and is just one hour drive from Ahmedabad. According to the prosecution case, during F the short span of matrimonial life the deceased faced demands for dowry as well as mental and physical harassment from the accused persons. She confided her sad plight with her mother, G the informant Chandrikaben (PW 8), as well as her cousin sister Aartiben (PW 10) and a friend Sonalben (PW 18).

H 3. According to the prosecution case, the accused persons wanted various articles by way of dowry and the

demand was conveyed to the deceased mainly by her mother-in-law, the appellant who allegedly, also used to instigate her son Nilesh to ill-treat his wife the deceased.

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4. The specific case of the prosecution is that on 5.7.1998, Hina informed her mother at about 8.30 a.m. on telephone that due to ill-treatment she was fed up and was going to end her life. Soon thereafter, the father-in-law of the deceased informed the parents of the deceased-Hina that she had consumed poison and was being removed to hospital. The parents left Surat by road but by the time they reached the hospital after 2 p.m., Hina was unconscious and was gasping for breath and soon she died.

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5. The material on record discloses that on the date of death of Hina i.e. 5.7.1998 itself, first information report was lodged by PW-8 Chandrikaben disclosing physical and mental harassment of the deceased particularly at the hands of her mother-in-law as well as demands for various articles by way of dowry. The post-mortem examination of dead body of Hina was conducted after necessary panchnama and on receipt of report from the Forensic Science Laboratory, it was confirmed that she had died of aluminum phosphate poisoning.

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6. After holding trial in accordance with law and taking on record oral as well as documentary evidence, the trial court did not find sufficient specific allegation against accused No.3, the father-in-law of the deceased and therefore accused No.3 was acquitted of all charges whereas accused No.1, the husband of the deceased and the appellant were convicted for identical charges as noticed earlier but acquitted of charge under section 306 IPC.

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7. Both the convicted accused preferred appeals before the High Court against their conviction. The State of Gujarat also preferred an appeal against acquittal of accused No.3 and a criminal revision was also instituted on account of a notice

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A issued by the High Court for enhancement of sentence awarded  
to the convicted accused. The High Court by common judgment  
and order, which is under appeal noticed certain special  
features in the conduct of accused No.1, the husband such as  
B her to hospital and that instances against him were general in  
nature and therefore granted acquittal to accused No.1. The  
appeal of the appellant was dismissed by confirming the  
conviction and sentence as made by the Trial Court.

C 8. Mrs. Meenakashi Arora, learned senior counsel argued  
the appeal at length seeking acquittal of the appellant on various  
grounds but particularly on the ground that the evidence against  
the appellant and against her son, accused No.1, who has been  
acquitted by the High Court stand at par and therefore, the  
D appellant is entitled to benefit of such parity. The other main  
ground urged by the senior counsel was that allegations of  
general harassment or cruelty against the mother-in-law i.e. the  
appellant cannot be used for sustaining conviction under  
Section 304B of the IPC unless it is found on the basis of good  
E evidence that such harassment was in connection with any  
demand for dowry.

9. To supplement the oral arguments extending over more  
than two days, written submissions have also been filed with a  
view to criticize the prosecution case and create doubt  
F regarding the correctness of allegations, both in respect of  
harassment and demand for dowry. It has also been highlighted  
that the death was on account of deceased taking a small dose  
of poisonous tablet which could be by accident. A defence plea  
was also raised that father of the deceased had talks with one  
G Minister and some officials of the police while he was traveling  
from Surat to reach the hospital and meet his daughter. On that  
basis it had been argued that the prosecution witness Dhirubhai  
(PW 9) being a member of legislative assembly wielded  
influence and interfered with investigation. Elaborating such  
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interference it was suggested that in all probability the deceased Hina must have made some statement in the Hospital and as no such statement has been disclosed, this appears to be a result of interference with investigation. Some case laws have also been cited particularly on the proposition that dowry does not include customary gifts not related to marriage, as spelt out in the case of **Satbir Singh vs. State of Punjab**, 2001(8) SCC 633 and several subsequent judgments taking the same view. Judgment of this Court in the case of **Durga Prasad vs. State of M.P.** 2010 (9) SCC 74 is one of the main judgments relied upon to support the proposition that even if cruelty to the deceased is proved, in order to bring home the guilt against the accused under Section 304B IPC, it must further be proved that the cruelty was in relation to demand for dowry. Several other judgments referred to in the written submissions are on general principles governing criminal trials and therefore, need not be dealt with separately. However, it is useful to take note of judgments beginning from the case of **Hardial Singh vs. State of Punjab**, 1992 Suppl. (2) SCC 455 in support of the proposition that where evidence is common to all accused, parity must be maintained in the matter of their conviction.

10. On the other hand, Ms. Jesel, learned counsel for the State has drawn the attention of this Court to paragraphs 22 and 23 of the High Court judgment to show that all the criticism made against the prosecution case in respect of evidence to show harassment and demand of dowry was carefully considered to come to a finding that it was the accused No.2 Kanchanben, the appellant before us who caused cruelty and ill-treatment to Hina and was responsible for demand of dowry. In paragraph 23, the High Court further noted the ill-treatment and harassment caused by the appellant and her behavior when a common relation Hasmukhbhai (PW 12) went to the house of the accused with a view to advise the accused not to torture the deceased. From further discussion in paragraph 23 it was

A shown that so far as the evidence against the accused No.1 was concerned, only general allegations were leveled against him and in that light the High Court noticed that almost similar general allegations were leveled against accused No.3, the father-in-law. In paragraph 23.1 it was further noted that besides  
 B parity in the case of accused No.1 and accused No.3 apparently the deceased had faith in accused No.1, as after consuming poison she immediately telephoned him. It was he who came to the house and took Hina to hospital and admitted her for treatment. The Court further noted that Hasmukhbhai (PW 12)  
 C did not allege any demand of dowry by Nilesh accused no.1 nor did Nilesh make any complaint against the deceased. As against the appellant, the High Court found cogent and specific evidence that she ill-treated and caused cruelty to the deceased.

D 11. Thus, according to learned counsel for the State, there could not be merit in the criticism of the defence that the case of the appellant stood at par with that of other co-accused who have been acquitted. She also pointed out that the plea of  
 E deceased having taken poison by mistake or accidentally is totally without merit, in view of earliest version of the occurrence in the FIR supported by the evidence of the informant that at about 8.30 in the morning of the fateful date, the deceased telephoned her mother to inform her that she was fed up with  
 F her life on account of torture and she was going to end her life. Hence, there could not be any chance of accidental taking of a highly fatal poison which no body can keep in the bed room mixed with ordinary medicines. She conceded that a demand of a mixture juicer which was clearly established through evidence of more than one witness was not mentioned in the  
 G FIR and demand of Rs.5 lacs spoken of by Sonalben (PW 18), a friend of the deceased, might be a mistake for Rs.50 thousand as appearing in the evidence of some other witnesses. She, however, further contended that such minor discrepancies cannot discredit the entire prosecution case.

H 12. It stands to reason that all minute details and all items

relating to demand by way of dowry may not come to the mind of grieving mother of the deceased at the time of lodging of FIR. It is well established in law that FIR should contain the essential features of the prosecution case but it cannot be expected to be an encyclopedia of whole prosecution case. It may be quite natural for a friend of the deceased such as PW 18 not to remember the exact figure which was disclosed by the deceased sometime back as the amount demanded by the mother-in-law. Learned counsel for the State also placed reliance upon the judgment of this Court in the case of **Satish Chandra and Anr. vs. State of Madhya Pradesh 2014 (6) SCC 723** in support of the proposition that if sufficient and good material is available on record then mother-in-law of the victim in a case under Section 304B IPC may lawfully be convicted for such an offence even in the absence of conviction of the husband.

13. After going through the relevant material including judgments of the courts below and evidence of material witnesses, particularly informant PW 8, her husband PW 9, a cousin of the deceased PW 10 and a friend of the deceased PW 18 this Court finds that the High Court has committed no error in appreciating the evidence for coming to the conclusion that allegations of torture as well as demand of articles by way of dowry against the appellant was clear, specific and stood proved. Learned senior counsel has tried to show that the family of the appellant is quite well off having two cars and two scooters for use. But that by itself is not sufficient to disbelieve the statement of witnesses noticed above. Even the evidence of PW 12 who is the common relation of both the parties discloses in no uncertain terms that he had received information from not only the informant Chandirkaben (PW8) but also from his niece Aartiben (PW 10) of demand of dowry articles as well as harassment and torture made to deceased Hina and disclosed by her to the informant and PW 10. In the last part of his statement in chief, PW 12 has categorically stated that Hina was being harassed mentally and physically for the purpose of

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A receiving dowry and therefore she committed suicide by taking  
poison. The evidence of PW 8, the informant at many places  
is very specific based upon version given by the deceased that  
her mother-in-law was finding faults repeatedly with her house  
hold work, she was compelling her to get up early in the morning  
B and was misguiding Nilesh, accused No.1 by talking about very  
minor matters about the deceased. At another place PW 8  
deposed that the deceased informed her that her mother-in-law  
asked the deceased in the name of Nilesh to bring a big box  
type cot, room furniture, juicer mixer, gifts and cash amount  
C received in marriage from her parents otherwise Nilesh would  
divorce her. When Hina told her mother in law that if such talk  
takes place she will commit suicide, the mother-in-law replied  
that her son will be relieved if she commits suicide.

D 14. Even the evidence of PWs 10 and 18, when examined  
carefully disclose specific and clear allegations against the  
appellant in respect of demand as well as torture.

E 15. On a careful perusal of the entire materials, it is found  
that the appellant cannot claim parity with the case of accused  
Nos.1 or 3 who were acquitted by the High Court and by the  
Trial Court respectively. The other criticisms against the  
prosecution case were raised before the court below and those  
have been satisfactorily dealt with by them. Hence they require  
no repetition.

F 16. In the facts of the case, we find no merit in this appeal  
and it is accordingly dismissed. However, in our view ends of  
justice would be satisfactorily met by reducing the sentence of  
eight years RI for offences under Section 304B and 498A to  
seven years RI. We order accordingly. Other sentences shall  
G remain the same. The bail bond of the appellant shall stand  
cancelled. She must surrender or be apprehended to serve out  
the remaining sentence in accordance with law.

H Kalpna K. Tripathy

Appeal dismissed.