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DHAIN SINGH AND ANR.

v.

STATE OF PUNJAB

AUGUST 10, 2004

B

[K.G. BALAKRISHNAN AND DR. AR. LAKSHMANAN, JJ.]

*Penal Code, 1860 :*

C

*Ss. 304-B and 201—Dowry death—Bride died of burn injuries 2½ years after her marriage—Injured not admitted in hospital—Body cremated without informing relatives of deceased and police—Conviction of husband—Contention that there was no evidence to show demand of dowry; and that there must be proximate connection between alleged cruelty and death of the deceased—Held, it is proved that deceased died of burn injuries and it was not under normal circumstances and that the husband caused harassment—S.113-B of Evidence Act could be invoked against the husband and he was rightly held guilty of the offences charged—Evidence Act, 1872—S. 113-B.*

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*S.201—Dowry death—Injured not admitted in hospital—Body cremated without informing relatives of deceased and police—Conviction—Accused, paternal uncle of deceased's husband, pleading that mere participation in cremation was not sufficient to prove that he committed offence u/s. 201—Held, the evidence shows that everything was done in clandestine and secret manner and circumstances would show that accused was party to the secret disposal of the body—Hence knowledge can be attributed to him that he knew well that an offence had been committed and he caused disappearance of the evidence—There is no illegality in conviction of the accused under s.201.*

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*Palvinder Kaur v. The State of Punjab, AIR (1952) SC 354, distinguished.*

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 5 of 2004.

H

From the Judgment and Order dated 4.12.2002 of the Punjab and Haryana High Court in Criminal Appeal No. 495-SB of 1989.

Kuldip Singh and Raj K. Pandey for the Appellant. A

Arun K. Sinha, Rakesh Singh and Ms. Naresh Bakshi for the Respondent.

The following Order of the Court was delivered : B

The appellants challenge the order of conviction and sentence passed against them by the Additional Sessions Judge, Patiala which was confirmed by the High Court of Punjab and Haryana. The first appellant was convicted under Sections 304-B and 201 IPC and was sentenced to rigorous imprisonment for a period of ten years and rigorous imprisonment for a period of two years respectively. The second appellant was found guilty under Section 201 IPC and was sentenced to rigorous imprisonment for a period of two years. C

The incident happened on 13.10.1988. Shinder Kaur the daughter of PW-2 was married to the first appellant Dhian Singh about two and a half years prior to her death. After the marriage Shinder Kaur stayed with her husband for about one year. It was alleged that the first appellant, the husband, wanted more dowry and started harassing her so she left her matrimonial home and started staying with her parents. Then at the intervention of the local panchayatdars a settlement was effected and about two months prior to her death, she left her parents' house and again started staying with the appellant Dhian Singh. On 22.10.1988, PW-2 came to know that his daughter Shinder Kaur was burnt to death. He immediately went to the police station and gave information to the police. The police registered a case and started investigation and during investigation it was revealed that the accused had disposed off the dead body on 13.10.1988 itself by cremating the body. D E F

On the side of the prosecution PW-1 to PW-8 were examined and on the defence side DW-1 Tara Singh was examined. The Sessions Court held that the deceased Shinder Kaur died of burn injuries and the first appellant Dhian Singh was responsible for cruelty on account of demand for dowry and thus committed the offence under Section 304-B IPC. The first appellant was also held responsible for committing the offence under Section 201 IPC. G H

**A** We heard learned counsel for the appellants and counsel for the respondent.

The counsel for the appellant urged before us that there was absolutely no evidence to show that the first appellant had ever demanded any dowry from PW-2. It was also contended that the prosecution failed to produce any evidence to show that there was any cruelty on the part of the first appellant. The contention of the appellant is not correct. PW-2 gave evidence to the effect that the appellant had demanded dowry and he demanded television set and PW-2 could not give the same and therefore the deceased was sent back to her parental home. It is also important to note that the deceased left the house of husband as she could not bear the miserable life in his house and there was a panchayat also to settle the dispute. Admittedly, the deceased Shinder Kaur died of burn injuries. It was proved that incident happened within the period of seven years of her marriage. Section 304-B defines the Dowry death and it states that the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband or in connection with any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death. In the instant case, it is proved that she died of burn injuries and it was not under normal circumstances. The evidence also show that the husband caused harassment, that is why she could not live with him in the matrimonial home and started staying with her parents.

**F** Section 113-B of the Evidence Act enables the Court to draw presumption in such circumstances to the effect that, when the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment or in connection with any demand for dowry, such person shall be deemed to have caused the dowry death.

**H** The contention of the appellant's counsel is that even if it is proved that there was cruelty on account for demand of dowry, such cruelty shall be soon before the death and there must be proximate connection between the alleged cruelty and the death of the deceased. It is true that the

prosecution has to establish that there must be nexus between the cruelty and the suicide and the cruelty meted out must have induced the victim to commit suicide. The appellant has no case that there was any other reason for her to commit suicide. The evidence shows that the first appellant had demanded dowry and he had sent her away from his house and only after the mediation she was taken back to appellant's house and death happened within a period of two months thereafter. These facts clearly show that the suicide was the result of the harassment or cruelty meted out to the deceased. The presumption under Section 113-B of the Indian Evidence Act could be invoked against the appellant and the Sessions Court rightly found the appellant guilty of the offence punishable under Section 304-B IPC and Section 201 IPC.

The second appellant is the paternal uncle of the first appellant. He was found guilty for the offence punishable under Section 201 IPC for causing disappearance of the evidence. The allegation against this appellant was that he helped in cremating the body of deceased Shinder Kaur.

The counsel for the appellant contended that mere participation in cremation of the body by itself is not sufficient to prove that he committed the offence punishable under Section 201 IPC. It was argued that in order to establish charge under Section 201 IPC, it is essential to prove that an offence has been committed and the accused knew or had reasons to believe that such offence had been committed and with the requisite knowledge and with the intent to screen the offender from legal punishment causes the evidence thereof to disappear or gives false information.

Reliance was placed on *Palvinde Kaur v. The State of Punjab*, reported in AIR (1952) SC 354, there the Court held that there was no direct evidence to show that the appellant therein was aware that an offence had been committed and there was no direct circumstantial evidence which was essential to prove the ingredients of the offence. In the instant case the glaring facts are to be noticed, Shinder Kaur died on 13.10.1988 of burn injuries. She was admittedly residing with the first appellant. According to the first appellant he was not in his house when Shinder Kaur sustained burn injuries. In his examination under Section 313 Cr P.C., he had taken the injured Shinder Kaur to the hospital. But the defence witness examined in the case deposed that Shinder Kaur was taken initially to a private doctor and as per his instructions she was taken to another government hospital

- A** but on the way she died. The first appellant did not inform the matter to the police and the body was cremated without any information being given to the police. The second appellant was residing near to the residence of first appellant. It is also pertinent to note that PW-2, the father of the deceased gave evidence to the effect that he was not informed of the death of his daughter at all and he came to know of her death through PW-6, Mukhtiar Singh. First appellant contended that there were about 50 persons at the cremation place including PW-2 and his relatives. There is absolutely no evidence to show that the cremation was done in the presence of PW-2 or any close relative of the deceased. The failure to inform PW-2 and police about the incident and the fact that the injured was not admitted in any hospital show that everything was done in clandestine and secret manner and circumstances of the case would show that the 2nd appellant was party to the secret disposal of the dead body. Hence, knowledge can be attributed to him that he knew well that an offence had been committed and he caused disappearance of the evidence. We do not find any illegality in the conviction of second appellant under Section 201 IPC.

Appellant No. 2 was granted bail by this Court and he had undergone imprisonment only for a period of one year. He has to surrender to his bail bonds to undergo the remaining period of sentence.

- E** The appeal is disposed of accordingly.

R.P.

Appeal disposed of.