

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL Nos. 1013-1014 of 2008

Sham Lal

.... Appellant

Versus

The State of Haryana Etc.

.... Respondents

J U D G M E N T

L. NAGESWARA RAO, J.

1. According to the FIR registered pursuant to the statement of PW-9 Pawan Kumar, the brother of the deceased, his sister Usha was married to the Appellant-Sham Lal in December, 1990. The Appellant demanded dowry of Rs.1,00,000/- after two months of the marriage. Rs.50,000/- was arranged and given to the Appellant. The deceased - Usha complained to her family members that her mother-in-law- Ganga Devi, her husband- Sham Lal and her

brothers-in-law- Krishan Lal and Ved Prakash were harassing her for not bringing sufficient dowry. A female child was born to the deceased- Usha and gifts were given by her family in accordance with custom. Appellant and his family were not satisfied with the gifts. The informant received information on 28th September, 1992 that his sister and her child had died due to burn injuries. They rushed to the house of the Appellant and found Usha and her daughter dead. Inquest was conducted by the investigating officer and the bodies were sent for post-mortem. A site plan of the occurrence scene was prepared and a can containing three liters of kerosene oil, burnt hair and pieces of burnt cloth were seized by the Sub-Inspector of Police. A final report was filed on completion of the investigation and charges were framed against the four accused *i.e.* Appellant, his mother and two brothers under Section 302 read with Section 34 of the IPC and in the alternative, under Sections 304-B and 498-A of the IPC. As there was no evidence pointed to the murder of Usha and her child by the accused-Appellant, the trial court opined that Section 302 read with Section 34 IPC was not proved. Insofar as the alternative

charges under Sections 304-B and 498-A were concerned, the trial court examined the prosecution version of the demand of Rs.1,00,000/- made by the Appellant after the marriage and the payment of Rs.50,000/- by the family members of the deceased. Pawan Kumar(PW-9), brother of the deceased deposed in his evidence that he contributed Rs.20,000/- along with his brother Ganga Ram who also contributed Rs.20,000/-. Another brother gave Rs.10,000/-. In all, Rs.50,000/- was collected amongst the brothers of the deceased and paid to the Appellant to meet the demand of dowry made two months after the marriage. Pawan Kumar stated that he raised a loan of Rs.10,000/- from the Co-operative Bank, Lakhan Majra for the sum to be paid to the Appellant. The trial court examined the testimony of Maya Chand Kalia (DW-3), the Branch Manager of the Co-operative Bank who stated that Pawan Kumar became a member of the bank only on 7th March, 1992 and obtained a loan of Rs. 10,000/- from the bank on 25th June, 1992. PW-9's evidence that he raised a loan of Rs.10,000/- from the bank in February, 1991 was disbelieved by the trial court. The trial court discussed the evidence of Pawan Kumar (PW-

9) and Ganga Ram (PW-11), the brothers of the deceased who stated that there was no demand made on behalf of the Appellant's family either prior to the marriage or during the marriage. A detailed analysis of the evidence on record led the trial court to conclude that the demand made by the Appellant and the payment made by Pawan Kumar and his brother Ganga Ram was not proved. The trial court took further notice of the fact that the Appellant and the deceased were living separately on the first floor of the house. They also had separate ration cards. A dispute between the Appellant and the deceased was referred to a *panchayat* on 13th October, 1991. During the Panchayat, a document (Ex.-DA) was executed in which it was stated that any further dispute arising between the parties will be settled by the *panchayat*. The investigating officer stated in his evidence that the information about the un-natural death of Usha and the child was given by Krishan Lal- elder brother of Sham Lal. Though the death was caused within seven years of marriage, the trial court was of the opinion that the prosecution was unable to prove cruelty on part of the

Appellant and the other accused. On the said findings, the trial court acquitted all the accused.

2. While affirming the acquittal of Ganga Devi, Krishan Lal and Ved Prakash, the High Court reversed the acquittal of the Appellant and convicted him for offences punishable under Sections 304-B and 498-A IPC and sentenced him to imprisonment for seven years. In ***Sheo Swarup v. King Emperor***¹, Lord Russell said:

“....the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a

¹ AIR 1934 PC 227 (2)

Judge who had the advantage of seeing the witnesses.”

3. The law is well settled that an acquittal by the trial court should not be interfered with unless it is totally perverse or wholly unsustainable. We proceed to examine whether the trial court was right in reversing the acquittal of the Appellant. The High Court held that the evidence of PWs-9 and 11 was not appreciated in a proper perspective by the trial court. While placing reliance on the evidence of PWs-9 and 11, the High Court was of the opinion that the family members of the deceased paid Rs.50,000/- to the Appellant as dowry. The Trial Court's opinion that PW-9 miserably failed to prove the source of the money paid to the Appellant was ignored by the High Court. It is clear from the evidence of DW-3 that PW-9 became a member of the Co-operative Bank only in the year 1992 and raised a loan from the bank on 20th May, 1992. The statement in his evidence that he raised a loan of Rs.10,000/- from the bank in February, 1991 to pay to the Appellant is false and misleading.

4. There is no perversity in the judgment of the trial court in its finding that the prosecution was unable to prove cruelty on the part of the Appellant and the other accused. The High Court committed an error in reaching a different conclusion regarding the cruelty by observing that there was a demand of Rs.1,00,000/- by the Appellant pursuant to which Rs.50,000/- was paid by the family members of the deceased. The High Court went wrong in upsetting the findings of the trial court regarding payment of dowry. Possibility of another view cannot be a ground for reversing acquittal by the Appellate Court. That apart, the conclusion arrived at by the High Court is completely contrary to the record.

5. For the aforementioned reasons, the Appeals are allowed and the conviction of the Appellant is set aside.

.....J.
[L. NAGESWARA RAO]

.....J.
[M.R.SHAH]

**New Delhi,
April 09, 2019.**