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Cr1.A.No. 607 OF 2004
ITEM NO.101

COURT NO.7

SECTION IIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Cr1. A. No. 607/2004

Adarsh Appellant(s)

VERSUS

State of Punjab

Respondent(s)

(With office report)

Date: 14/12/2004 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.G. BALAKRISHNAN
HON'BLE Mr. JUSTICE P.K. BALASUBRAMANYAN

For Petitioner(s)Mr. D.P. Singh, Adv.
Mr. Sanjay Jain, Adv.
Ms. Avneet Toor, Adv.

For Respondent(s)Mr. Bimal Roy Jad, Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard learned counsel for the parties.
The appeal is disposed of in terms of the signed
order.

(R.K. DHAWAN) (VEERA VERMA)
COURT MASTER COURT MASTER

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 607 OF 2004

Adarsh Appellant(s)

VERSUS

State of Punjab

Respondent(s)

O R D E R

This is an appeal preferred against the judgment of the Division Bench of the High Court of Punjab and Haryana at Chandigarh. The appellant Jagdish Raj was tried along with three others for the offence punishable under Sections 304-B/498-A read with Section 120-B of the Indian Penal Code. The Sessions Court acquitted one of them and the rest of the three accused preferred appeal before the High Court. The High Court acquitted two accused and the present appellant alone was convicted by the High Court for the offence punishable under section 304-B read with Section 120-B IPC and was imposed with a sentence of 7 years rigorous imprisonment and for the offence under Section 498-A to undergo rigorous imprisonment for one year with a fine of Rs .500/- and in default of payment thereof to undergo further rigorous imprisonment for six months.

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The prosecution case is that the appellant demanded dowry from the deceased wife and her parents and as the parents of the deceased were not giving enough dowry to the appellant he was harassing his wife Sushma and she committed suicide by consuming poison. The marriage between the appellant and his wife Sushma took place in 1985 and they were staying together for some period and there were disputes between the parties and on certain occasions the wife Sushma used to stay with her parents. On 1-11-1987, the father of the deceased Sushma received a telephone call that his daughter met with an accident. He along with other members of the family reached the house of the appellant at Mohali and found the dead body of his daughter in the house of the appellant. He wanted the post-mortem examination on the dead body of his daughter and he informed the police and P.W.2 conducted the post-mortem examination. The father of the deceased Sushma gave the FI statement and on the basis of his information police registered a case under Sections 302/34/120-B and 498-A of the Indian Penal Code. However, after the investigation the police filed final report on 6.1.1987 implicating the accused for the offences punishable under Sections 304-B/498-A and 120-B of the Indian Penal Code.

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On the side of the prosecution 16 witnesses were examined and on the side of the defence 7 witnesses were examined. The appellant had set up a plea that the deceased Sushma was under treatment for some period and she had natural death. This plea was disbelieved and the appellant was found guilty as afore stated.

We heard learned counsel for the appellant and counsel for the State.

The counsel for the appellant firstly contended that the death was not due to suicide but a natural consequence of administering of medicines and he took us to the evidence of Pws.1,2 and DW-1 and also to the evidence of chemical examiner PW-11 and it was contended that there was no symptom to the effect that the deceased had consumed aluminium phosphate. We are not impressed with this contention as the chemical examination report itself shows the presence of aluminium phosphate.

It is also important to note that in the post-mortem examination the doctor noticed that the liver and other internal organs were congested. On the defence side, the appellant tried to show that the deceased was treated by PW-1 for malaria and on the date of incident she had taken some paracetamol tablets and Gelusil tablets and these two

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medicines must have caused allergy and the presence of rashes on her body could be due to these medicines and in the post-mortem report it is not clear whether death had occurred due to these two medicines. We do not find any force in this contention, in view of the clear evidence of PW.11 and PW.2 who said that there was presence of aluminium phosphate in the internal organs of the body of the deceased.

The counsel further contended that there was no evidence to show that the appellant ever demanded dowry either from the deceased or from her parents. Various correspondences were exchanged between the parties and we have gone through the same. We find some force in this contention. In the series of letters sent by the deceased to her parents no reference has been made about the demand for dowry. It appears there were serious disputes between the parties and the deceased was reluctant to stay in the house of the appellant. In a letter she had requested her mother to take her immediately from the house of the appellant. The atmosphere in the house of the appellant was not very conducive for deceased to stay there and it is clear that the

appellant had been treating her cruelly and it was unbearable to her. The prosecution relied on the
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letter produced by PW-10 which he alleged to have been taken from the death bed. According to PW-10, when he visited the appellant on hearing the death of his sister he was present by the side of the dead body and at that time he got the letter. Surprisingly he had not handed over this letter to the police and he also did not give any statement regarding this letter when he was questioned by the police. This letter was produced at the time when he was examined as a witness by the prosecution. The counsel for the appellant doubted the genuineness of this letter. In Ex.PF letter, there was some reference about the demand of dowry by the appellant. We are not satisfied with the authenticity and genuineness of Ex.PH letter. There is absence of satisfactory evidence regarding demand of dowry. Pws.3,5 and 9 had given evidence to the effect that there was demand of dowry but PW-9 is an interested witness and Pws.3 and 5 could not have any direct knowledge about demand of dowry. On re-appreciation of the entire evidence, we are of the view that there is lack of evidence regarding demand for dowry. In the absence of the demand for dowry and consequential harassment of offence, if any, committed by the appellant will not come within the purview of Section 304-B of the IPC. However, overall evidence in this case

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clearly establishes that the deceased Sushma had unnatural death and she was being treated cruelly and she must have been driven to commit suicide due to cruelty and harassment on the part of the appellant. Hence it is a case of an offence of abetment to commit suicide. It is clear from the evidence that the appellant had committed the offence punishable under Section 306 IPC.

In the result, we set aside the conviction and sentence of the appellant for offence punishable under Section 304B read with Section 120B IPC and also for Section 498A read with Section 120B IPC and instead we find him guilty for the offence punishable under Section 306 IPC and sentence him to undergo rigorous imprisonment for a period of five years. With this modification, the appeal is disposed of.

.....J
(K.G. BALAKRISHNAN)

.....J
(P.K. BALASUBRAMANYAN)

NEW DELHI;
DECEMBER 14, 2004.