IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SMT. JUSTICE SUNITA YADAV

ON THE 8th OF JANUARY, 2024

CRIMINAL APPEAL No. 269 of 2008

BETWEEN:-

GUDDIBAI W/O SHRI BALKISHAN, AGED ABOUT 45 YEARS, R/O VILLAGE BADARWAS, THANA PICHHOR, DISTRICT SHIVPURI (MADHYA PRADESH)

…....APPELLANT

(BY SHRI SANJEEV AGRAWAL - ADVOCATE)

AND

STATE OF MADHYA PRADESH THROUGH POLICE STATION PICHHORE, DISTRICT SHIVPURI (M.P.)

…....RESPONDENT

(BY SHRI APS TOMAR - PUBLIC PROSECUTOR)

This *appeal coming on for hearing this day, the court passed the following:*

J U D G M E N T

This appeal has been filed by the appellant under Section 374(2) of Cr.P.C. being aggrieved by the judgment dated 26/02/2008 passed by Additional Sessions Judge Pichhore, District Shivpuri in S.T. No.202/2003 whereby, appellant has been convicted under Section 304-B of IPC to undergo Seven Years R.I. and under Section 201 of IPC to

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undergo One Year R.I. with fine of Rs.1,000/- with default stipulations.

2. As per prosecution story, short facts of the case leading to filing of this criminal appeal are that deceased – Rachna was married to Azad, son of appellant Guddibai 13-14 months before her death. After marriage, Rachna went from her in-laws' house to her parents house and when she used to come, she used to tell her parents that her husband and in-laws beat her and asked her to get a motorcycle or fifty thousand rupees. On date 17.07.2003, Rachna's brother Pragilal (PW-5) due to birthday of his five year old son, brought Rachna from her in-laws' house. On the next day, co-accused Balkishan came and while taking Rachna away said that they would be able to see her face only if give him a motorcycle or fifty thousand rupees. About ten days later, on 30.7.2003, Rachna's husband Azad informed that Rachna had been bitten by a snake. After receiving the information when the parents of Rachna went to her in-laws' house to see her, they met the accused, his son and other persons near the village Jarai and the body of Rachna was kept in a jeep. Co-accused Balkishan as well as his son Ajad told that Rachna had been bitten by a snake and thereafter they went to village Himmatpur for taking the medicine of snakebite where this fact was revealed that the death of Rachna was not on account of snake bite, rather she died by hanging. After this, Rachna was taken to Hospital and thereafter, the matter was informed to the police. On this information, merg was registered and after investigation and recording of statements of the relatives of the deceased, on the basis of merg enquiry and circumstantial evidence a case was registered against the husband, mother-in-law & father-in-law by the Police Station Pichhore at Crime No.176/2003 for the offences punishable under Sections 304-B, 201 of

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IPC. After completing the due investigation, charge-sheet was filed before the competent court having criminal jurisdiction for the aforesaid offences.

3. Learned trial Court after hearing learned counsel for the rival parties and after appreciating the evidence available on record, convicted the appellant/accused under Section 304-B of IPC to undergo rigorous imprisonment of Seven Years and under Section 201 of IPC to undergo rigorous imprisonment of One Year with fine of Rs.1,000/- with default stipulation. Being aggrieved by the impugned judgement of conviction and order of sentence dated 26-02-2008 passed by Additional Sessions Judge, Pichhore, District Shivpuri (Madhya Pradesh) in S.T. No.202/2003, the accused / appellant has filed the instant criminal appeal.

4. Learned counsel for the appellant / accused argued that learned trial Court has wrongly convicted the appellant ignoring the fact that the father of deceased (PW-3) Harcharan, mother (PW-4) Smt. Benibai, brother (PW-5) Pragilal, independent witness (PW-7), sister-in-law (PW-9) Savita have not supported the case of prosecution and turned hostile in respect to allegations of cruelty or harassment for demand of dowry. It is further argued that the learned trial Court merely on the basis of evidence of (PW-12) Suresh, convicted the appellant. Further argument is that (PW-12) himself admitted that he has separate living with the family of deceased, in these circumstances, when (PW-12) has separate living and has nothing to day to day affairs by the family of deceased, merely on the basis of evidence of this witness, learned trial Court has wrongly convicted the appellant that soon before the death of deceased, she was subjected to cruelty for demand of dowry. It is

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submitted that the appellant has already suffered almost nine months of incarceration out of total jail sentence awarded to her. It is further submitted that the prosecution has failed to bring any cogent evidence against the appellant with regard to demand of dowry, therefore, the impugned judgment passed by trial Court be set aside and the appellant be acquitted from all the charges.

5. On the other hand, learned counsel for respondent/State submitted that after due appreciation of evidence, learned trial Court has found the offence proved against the appellant which requires no interference. He has further submitted that there is ample evidence to show that the deceased was subjected to mental and physical cruelty soon before her death which is supported by the evidence of (PW-12). Hence, the appeal filed by the appellant be dismissed.

6. Heard learned counsel for the rival parties and perused the material available on record.

7. Prosecution has examined as many as 13 witnesses i.e. (PW-1) Gopaldas, (PW-2) Dr. Ajay Kumar Pathak, (PW-3) Harcharan, (PW-4) Smt. Benibai, (PW-5) Pragilal, (PW-6) Komal, (PW-7) Jagdish, (PW-8) Ramkishan, (PW-9) Savita, (PW-10) Om Prakash Dubey, (PW-11) Pankaj Shrivastava, (PW-12) Suresh & (PW-13) C.P. Singh to prove its case. It is not disputed between the parties that deceased was married to co-accused Ajad, son of appellant. It is also not disputed that Rachna had died within seven years of her marriage. (PW-2) Dr. Ajay Kumar Pathak has been examined to prove the cause of death and according to this witness, deceased died on account of asphyxia due to hanging. Thus, the prosecution has proved that death of the deceased was within seven years of her marriage due to hanging now it has to seen whether

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appellant harassed the deceased soon before her death for demand of dowry.

8. Prosecution has examined (PW-3) Harcharan who is father of deceased, (PW-4) Smt. Benibai who is mother of deceased, (PW-5) Pragilal who is brother of deceased, (PW-7) Jagdish who is an independent witness, (PW-9) Savita who is sister-in-law of deceased & (PW-12) Suresh who is cousin of deceased to prove the factum of cruelty or harassment on deceased by the appellant. (PW-3) Harcharan, (PW-4) Smt. Benibai, (PW-5) Pragilal, (PW-7) Jagdish & (PW-9) Savita have not supported the case of prosecution and turned hostile. Even the independent witness (PW-7) Jagdish has not supported the case of prosecution. Learned trial Court has convicted the appellant on the basis of statement of (PW-12) Suresh who is cousin of the deceased. According to this witness, appellant as well as co-accused persons have demanded the motorcycle or fifty thousand rupees as dowry to the father of deceased (PW-3) Harcharan, however, (PW-3) has not supported the statement of this witness that appellant has demanded a motorcycle of fifty thousand rupees. (PW-3) Harcharan has specifically stated that no demand was made by the appellant or his family members. In these circumstances when according to this witness (PW-3), appellant has not demanded dowry from him, more so, father, mother, brother as well as sister-in-law of the deceased have also denied that any demand was made by the appellant or his family members, the statement of (PW-12) Suresh who is cousin brother and living separately does not prove beyond reasonable doubt that appellant caused cruelty soon before her death for demand of dowry.

9. (PW-12) Suresh is not an eye-witness of alleged act of cruelty or

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harassment. This witness has admitted that he was residing separately with the family of deceased. According to the statements of (PW-12) Suresh, he met the deceased Rachna on the occasion of birthday of the son of Pragilal (PW-5) and the deceased informed him about the demand of dowry, however, there is omission in Police statement in this respect, therefore, the statement of this witness cannot be relied upon. This witness has admitted that Rachna informed him about alleged demand of dowry, but he never lodged any report. In these circumstances, merely on the basis of evidence of this witness which is not supported by the statements of parents, brother as well as sister-in-law of the deceased and there is material omission in respect to allegations regarding demand of dowry between his court statement and police statements, the statements of (PW-12) Suresh cannot be relied upon and thus, learned trial Court committed error in relying upon the testimony of (PW-12) Suresh.

10. The appellant can be convicted and punished only when by leading cogent evidence, the prosecution proved its case to the hilt. As noticed above, the prosecution could not establish its case beyond reasonable doubt. The evidence must be of sterling quality and should be of a nature that a conclusion can be drawn that appellant and appellant alone ‘must’ have committed the offence and not that appellant perhaps/might have committed the offence. The prosecution could not satisfy the aforesaid litmus test in the instant case.

11. The order of conviction can be based only on legal evidence and not on hypothetical propositions or unwarranted inference. A moral conviction regarding the guilt of an individual has no place in criminal jurisprudence. In this case, there is no satisfactory proof to make out the

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charges against the appellant. Therefore, the appellant is entitled for acquittal.

12. After perusal of evidence on record, this Court is of the opinion that the prosecution has utterly failed to meet out the essential ingredients of Sections 304-B & 201 of IPC since the material witnesses have turned hostile and the best evidence i.e. conversation of deceased "soon before her death" nothing depicts any sort of demand of dowry and cruelty thereof.

13. Thus, considering the evidence which has been led by the prosecution as the learned trial court committed grave error in ignoring and glossing over various contradictions in the testimony of (PW-12), this Court is of the considered opinion that the prosecution has failed to establish any charge against the appellant, beyond reasonable doubt, accordingly, she is acquitted of charges under Sections 304-B & 201 of IPC. The appellant is also acquitted from all the charges appended against her.

14. Resultantly, the judgment and sentence dated 26/02/2008 passed by Additional Sessions Judge Pichhore, District Shivpuri in S.T. No. 202/2003 is hereby set aside.

15. The appellant is on bail. Her bail bonds and surety bonds stand discharged and the fine amount paid, if any, be returned to the appellant.

16. The appeal succeeds and is hereby **allowed**.

17. A copy of this order is sent to the court below concerned.

18. Record be sent back to the concerned trial court.

19. Certified copy, as per rules.

(SUNITA YADAV)
JUDGE

Vpn/-

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