

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 58 OF 2002

Prem Kanwar

....Appellant

Versus

State of Rajasthan

....Respondent

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the judgment of a learned Single Judge of the Rajasthan High Court at Jodhpur allowing the appeal filed by the State of Rajasthan questioning correctness of the judgment of acquittal passed by a learned Sessions Judge, Sriganganagar. The appellant and two others faced trial for alleged commission of offence punishable under Sections 306 and 304 Part-B of the Indian Penal Code, 1860 (in short the

‘IPC’) and Section 4 of the Dowry Prohibition Act, 1961 (in short ‘Dowry Prohibition Act’).

2. Prosecution version unfolded during trial is as follows:-

On 23-04-1988 at about 2.05 p.m., the accused Krishnalal lodged an oral report Ex.P/12 before Jagmalram (PW-11) SHO, Police Station Purani Abadi, Sri Ganganagar stating inter-alia that he was married with Smt. Raju, (hereinafter referred to as the deceased) in the year 1984 and his father had already died before 15 years back and since then he was living with his mother Prem Kanwar, the present appellant and uncle Puran Chand and he was not in service and thus was unemployed. On that day, he went out from his house for some work and when he returned back at about 1.30 p.m. he found crowd near his house and also found fire in his house and people were extinguishing the fire and he came to know that his wife, the deceased was burnt and had died and, therefore, he had come to inform the police.

On this report, police registered the FIR No. 7/88 and started investigation.

During investigation, postmortem of the dead body of the deceased was got conducted and the post mortem report is Ex. P/3, where the doctors

opined that the cause of the death of the deceased was asphyxia due to ante-mortem burns.

When the investigation in FIR No. 7/88 was going on, PW 1 Bachna Ram, father of the deceased, lodged a written report Ex. P/1 on 26-4-1988 before police station Purani Abadi, Sri Ganganagar stating inter-alia that all the three accused have murdered his daughter (deceased) by burning her and he had also come to know that a report was also lodged on behalf of the accused stating therein that the deceased had committed suicide, but the fact was that all the three accused have killed her. It was further stated in the report that all the three accused used to harass and torture her as she was an illiterate lady and accused no 1 Krishnalal (husband of the deceased) was an educated person and accused used to say that in dowry nothing was given to them and thus, they used to torture, harass and humiliate her. It was further stated in the report that action be taken against the accused for killing her daughter (deceased) by burning.

On this report, police chalked out FIR Ex. P/2 for the offence u/Ss. 306, 304 B IPC and started investigation.

After usual investigation, police submitted challan against the accused respondents for the offence u/Ss. 306, 304 B IPC in the court of

magistrate holding inter alia that it was a case of dowry death. Thereafter, the case was committed to the Court of Session.

As the accused persons denied the allegations trial was held. Eleven witnesses were examined to establish the accusations. Learned Sessions Judge directed acquittal inter-alia holding as follows:

1. That it is a case of suicide by the deceased.
2. That death of the deceased was caused due to burning and has taken place within seven years of the marriage.
3. That Bachnaram (PW.1) father of the deceased took the deceased to his house at the time of marriage of his son and kept the deceased in his house for 12 months and during that period nobody came from her-in-laws' house to take her back.
4. That at the time of marriage of son of Rairam (PW-4), Bachnaram (PW-1) and PW.4 went to the house of her in-laws to take deceased where accused Prem Kanwar (mother-in-law of the deceased) expressed her displeasure and told that deceased be taken away by them and her clothes were thrown away.
5. That above facts were admitted by the learned Sessions Judge at pages 19 and 20 of his impugned judgment. However, he observed that this statement of accused Prem Kanwar (mother-in-law of the deceased) is to some extent objectionable, but no case of dowry death or abetment of suicide is made from this part of her statement.
6. That prosecution has not been able to prove its case beyond all reasonable doubts against the accused respondents for the offence under Sections 306 and 304B IPC and Section 4 of the Dowry Prohibition Act.”

It is to be noted that the three accused persons were related to the deceased in the following manner:

Krishnalal is the husband of the deceased, Puran Chand is the Uncle-in-law and Prem Kanwar, the present appellant is the mother-in-law.

The High Court found that the conclusion of the trial Court that the case was one of suicide was not established. The High Court found that the possibility that before burning the deceased was murdered was clear from the evidence.

3. Learned counsel for the appellant submitted that considering the limited nature of the scope of interference in a matter of acquittal, the High Court ought not to have interfered, particularly, when it found that the acquittal was in order so far as the other co-accused persons are concerned. It was submitted that the High Court's conclusion that the skull bones were broken, which rules out the case of suicide, is contrary to medical evidence. The High Court noted that to bring in application of Section 304 Part B, it is immaterial whether the death is suicidal or homicidal.

4. With reference to the evidence of Dhanni Devi (PW-5) it was submitted that her evidence was not sufficient to fasten the guilt on the appellant.

5. In response, learned counsel for the respondent-State supported the judgment of the High Court.

6. In order to attract Section 304B IPC, the following ingredients are to be satisfied.

i) The death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances.

ii) Such death must have occurred within 7 years of the marriage.

iii) Soon before her death, the woman must have been subjected to cruelty or harassment by her husband or any relative of her husband; and

iv) Such cruelty or harassment must be in connection with the demand of dowry.

Sections 304B and Section 498A read as follows:

“304-B. Dowry Death- (1) Where 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 for, 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.

Explanation – For the purpose of this sub-section ‘dowry’ shall have same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

“498-A: Husband or relative of husband of a woman subjecting her to cruelty- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation – For the purpose of this section ‘cruelty’ means –

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

7. The term “dowry” has been defined in Section 2 of the Dowry Prohibition Act, 1961 (in short ‘Dowry Act’) as under:-

“Section 2. Definition of ‘dowry’ – In this Act, ‘dowry’ means any property or valuable security given or agreed to be given either directly or indirectly –

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person,

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mehr in the case of persons to whom the Muslim personal law (Shariat) applies.

Explanation I- For the removal of doubts, it is hereby declared that any presents made at the time of a marriage to either party to the marriage in the form of cash, ornaments, clothes or other articles, shall not be deemed to be dowry within the meaning of this section, unless they are made as consideration for the marriage of the said parties.

Explanation II- The expression ‘valuable security’ has the same meaning in Section 30 of the Indian Penal Code (45 of 1860).”

8. Explanation to Section 304-B refers to dowry "as having the same meaning as in Section 2 of the Act", the question is : what is the periphery of the dowry as defined therein ? The argument is, there has to be an agreement at the time of the marriage in view of the words "agreed to be given" occurring therein, and in the absence of any such evidence it would not constitute to be a dowry. It is noticeable, as this definition by amendment includes not only the period before and at the marriage but also the period subsequent to the marriage. This position was highlighted in Pawan Kumar and Ors. v. State of Haryana (1998 (3) SCC 309).

9. The offence alleged against the accused is under Section 304-B IPC which makes "demand of dowry" itself punishable. Demand neither conceives nor would conceive of any agreement. If for convicting any offender, agreement for dowry is to be proved, hardly any offenders would come under the clutches of law. When Section 304-B refers to "demand of dowry", it refers to the demand of property or valuable security as referred to in the definition of "dowry" under the Act. The argument that there is no demand of dowry, in the present case, has no force. In cases of dowry deaths and suicides, circumstantial evidence plays an important role and inferences

can be drawn on the basis of such evidence. That could be either direct or indirect. It is significant that Section 4 of the Act, was also amended by means of Act 63 of 1984, under which it is an offence to demand dowry directly or indirectly from the parents or other relatives or guardian of a bride. The word "agreement" referred to in Section 2 has to be inferred on the facts and circumstances of each case. The interpretation that the accused seek, that conviction can only be if there is agreement for dowry, is misconceived. This would be contrary to the mandate and object of the Act. "Dowry" definition is to be interpreted with the other provisions of the Act including Section 3, which refers to giving or taking dowry and Section 4 which deals with a penalty for demanding dowry, under the Act and the IPC. This makes it clear that even demand of dowry on other ingredients being satisfied is punishable. It is not always necessary that there be any agreement for dowry.

10. Section 113-B of the Evidence Act is also relevant for the case at hand. Both Section 304-B IPC and Section 113-B of the Evidence Act were inserted as noted earlier by the Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths. Section 113-B reads as follows:-

“113-B: Presumption as to dowry death- 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 has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation – For the purposes of this section ‘dowry death’ shall have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860).”

11. The necessity for insertion of the two provisions has been amply analysed by the Law Commission of India in its 21st Report dated 10th August, 1988 on ‘Dowry Deaths and Law Reform’. Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry related deaths, legislature thought it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background presumptive Section 113-B in the Evidence Act has been inserted. As per the definition of ‘dowry death’ in Section 304-B IPC and the wording in the presumptive Section 113-B of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the concerned woman must have been “soon before her death” subjected to cruelty or harassment “for or in connection with the demand of dowry”. Presumption under Section 113-B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the Court to raise a

presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials:

- (1) The question before the Court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304-B IPC).
- (2) The woman was subjected to cruelty or harassment by her husband or his relatives.
- (3) Such cruelty or harassment was for, or in connection with any demand for dowry.
- (4) Such cruelty or harassment was soon before her death.

12. A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the 'death occurring otherwise than in normal circumstances'. The expression 'soon before' is very relevant where

Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by prosecution. 'Soon before' is a relative term and it would depend upon circumstances of each case and no strait-jacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. The expression 'soon before her death' used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression 'soon before' is not defined. A reference to expression 'soon before' used in Section 114. Illustration (a) of the Evidence Act is relevant. It lays down that a Court may presume that a man who is in the possession of goods 'soon after' the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. The determination of the period which can come within the term 'soon before' is left to be determined by the Courts, depending upon facts and circumstances of each case. Suffice, however, to

indicate that the expression 'soon before' would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live-link between the effect of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence.

13. The Medical evidence is found in the statement of Dr. Rajendra Kuinar Gupta. (PW-6). He stated that for conducting the postmortem of the dead body of the deceased, a Medical Board was constituted on 25-04-1988 and apart from him, Dr. O.P. Sharma and Dr. Avinash Sardana were members of the Board. He further stated that dead body of the deceased was received on 23-04-1988 at about 8.00 p.m. and same was kept on ice and post mortem of the dead body of the deceased was conducted on 25-04-1988 and on examination, following aspects were noticed:

1. That whole body was burnt.
2. That hairs of head of the deceased were totally burnt.
3. That outer portion of the skull had come out.
4. That there were nine bangles and one kada in the Left

forearm of the deceased.

5. That bones of skull of the deceased were broken.

14. The doctors opined that cause of death of the deceased was Asphyxia due to ante mortem burns. He has proved the post mortem report Ex.P/3.

15. Thus, from the post mortem report Ex.P/3 and by the statement of Dr. Rajendra Kumar Gupta (PW-6), the fact that deceased died because of burns is very well established and at the time of post mortem of the dead body of the deceased, her skull bones were found broken.

16. In the case of burning the fracture of skull is not a necessary corollary but in the present case the skull bones were broken. Therefore, the fact remains that she was killed before death. Therefore, the High Court was justified in holding that the Sessions Judge erroneously concluded that it was a case of suicide.

17. Jasvinder Singh (PW-7) is an independent witness who is neighbour of the accused. His evidence is of considerable importance. According to him, while he was standing at the place where the deceased was burning the

witness told Ramdev for extinguishing the fire upon which the appellant said that the deceased has been burnt and let her burn and it is no use extinguishing the fire. This statement has been rightly highlighted by the High Court to show that her role as alleged by the prosecution has been established.

18. The principles which would govern and regulate the hearing of appeal by the High Court against an order of acquittal passed by the trial Court have been set out in innumerable cases of this Court and in Ajit Savant Majagavi v. State of Karnataka (AIR 1997 SC 3255) the following principles have been re-iterated:

1. In an appeal against an order of acquittal, the High Court possesses all the powers and nothing less than the powers it possesses while hearing an appeal against an order of conviction.
2. The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by trial Court, if the said findings are against the weight of the evidence on record, or in other words, perverse.
3. Before reversing the finding of acquittal, the High Court has to consider each ground on which the order of acquittal was based and to record its own reasons for not accepting those grounds not subscribing to the view expressed by the trial court that the accused is entitled to acquittal.
4. In reversing the finding of acquittal, the High Court has to keep in view the fact that the presumption of innocence is still

available in favour of the accused and the same stands fortified and strengthened by the order of acquittal passed in his favour by the trial court.

5. If the High Court on a fresh scrutiny and re-appraisal of the evidence and other material on record, is of the opinion that there is another view which can be reasonably taken, then the view which favours the accused should be adopted.

6. The High Court has also to keep in mind that the trial court had the advantage of looking at the demeanor of witnesses and observing their conduct in the Court especially in the witness box.

7. The High Court has also to keep in mind that even at that stage, the accused was entitled to benefit of doubt. The doubt should be such as a reasonable person would honestly and conscientiously entertain as to the guilt of the accused.

19. In this respect, the decisions of this Court in Balbir Singh Vs. State of Punjab (AIR 1957 SC 216) Ram Kumar Vs. State of Haryana (AIR 1995 SC 280), Bharwad Jakshibhai Nagjibhai Vs. State of Gujarat (AIR 1995 SC 2505), Hari Chand Vs. State of Delhi (AIR 1996 SC 1477), Raghbir Singh Vs. State of Haryana (JT 2000 (5) SC 21), and Hari Ram Vs. State of Rajasthan (JT 2000 (6) SC 254) may be seen.

20. In Ashok Kumar Vs. State of Rajasthan (AIR 1990 SC 2134) this Court has held as under :

"While caution is the watchword, in appeal against acquittal as the trial Judge has occasion to watch demeanour of witnesses interference should not be made merely because a different conclusion could have been arrived at. Prudence demands restraint on mere probability or possibility but in perversity or misreading interference is imperative otherwise existence of power shall be rendered meaningless. In the present case the order of the trial Court is vitiated as part from deciding the case on irrelevant consideration the most serious error of which he was guilty and which rendered the order infirm which could be set aside by the High Court was that he misread the evidence and indulged in conjectural inferences and surmises.

21. The evidence of PWs 1, 2, 3, 4 and 5 clearly shows the greed of the accused who was persistently taunting and harassing the deceased for not having brought sufficient dowry. Therefore, the High Court was justified in upsetting the order of acquittal passed by the trial Court and directing her conviction. We find no merit in this appeal which is accordingly dismissed.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(Dr. MUKUNDAKAM SHARMA)

New Delhi,

January 7, 2009