

# SUPREME COURT OF INDIA

Anil Kumar

Vs.

State of Punjab

(G.B. Pattanaik and S.V.Patil JJ.)

28.03.2000

## ORDER

1. Appellant Anil Kumar stood charged under Section 306 I.P.C. for having abated (Sic) the commission of offence of suicide by his wife Renu Bala on the fateful day of 29.10.1985. According to the prosecution case the accused and the deceased were neighbours and they developed intimacy among them. But when the question of their marriage came up, the parents of the deceased did not like the idea and persuaded the deceased not to marry the accused. But on account of close intimacy between the accused and the deceased, and on the insistence of the deceased the marriage took place on 14th August, 1985 without much pomp and show. But soon after the marriage the accused put pressure on his wife the deceased to get money from the parents in law and in fact on such demand being made, the father-in-law PW. 7 gave a Television and Refrigerator. But soon thereafter when the farther demand of Rs. 20,000/- was made PW. 7 pleaded inability and wanted some time so that the money could be arranged and given. Then the further prosecution case in that on the date of occurrence at 12.00 noon the accused and the deceased quarreled among themselves on account of the fact that the father of the deceased did not give the money demanded and then both of them went to their room in the upstairs and bolted the room from inside and thereafter a hue and cry was raised whereupon the PWs. 7 and 13 rushed to the place of occurrence and found the room being ablaze while being bolted from inside. The room was then broken up and accused was found inside the room while the deceased was burning. Then the deceased was removed to the hospital, and on the basis of information given by PW. 7 the police registered a case. The deceased died on the next morning, and thereafter on completion of the investigation, the police submitted the charge-sheet on the basis of which accused was tried for the offence, as already stated. The learned Sessions Judge examined the evidence on record and came to hold that the investigation itself had not been fairly down which is apparent from the fact that even when the deceased was still alive a case has been registered under Section 306 IPC. The Sessions Judge also considered the material omissions in the statement of PWs. 7 and 13 before the police under Section 161, Criminal Procedure Code and came to the conclusion that such material omissions amount to contradiction and have been duly confronted to the witness for which no explanation has been offered, and therefore, it would be unsafe to rely on the said testimony to base a conviction of the accused of the charges leveled against him. The Sessions Judge also came to the conclusion that the time gap between the date of marriage and the alleged occurrence is such it militates against any demand for financial assistance. The Evidence of PW. 7 that he had given a Television and Refrigerator was belied by the fact that no such seizure was made by the police in course of investigation from the house of the accused, the non-examination of one Sudershan, who

is alleged to be the witness who saw the accused and the deceased going to the upstairs and bolted the room from inside and whereafter the room was seen ablaze was also considered to be fatal to the prosecution and no explanation has been offered by the prosecution for non-examination of said Sudershan. The learned Sessions Judge also commented upon the fact that though the occurrence took place in a busy locality yet none of the witnesses of the locality was examined by the prosecution. Finally, the learned Sessions Judge also taking into consideration the fact that the very prosecution case unfolded from the evidence of PWs. 7 and 13 that the room had been bolted from inside and was seen ablaze and it is PW. 7 who broke open the room and found the accused inside the room is not believable as there has been no sign of any breaking of the door and the investigation is totally silent on that aspect of the matter. Taking all the factors into consideration and having recorded a finding that evidence of PWs. 7 and 13 are not reliable, the Sessions Judge recorded an order of acquittal. On appeal, the High Court without examining the reasons on which the learned Sessions Judge recorded an order of acquittal and without focussing its attention to the veracity of the two main witnesses PWs. 7 and 13 on mere surmises and conjectures, set aside the order of acquittal and convicted the appellant of the offence under Section 306, and hence the present appeal.

2. Mr. Tulsi, the learned senior counsel appearing for the appellant contended that though the power of the appellate court to interfere with an order of acquittal is the same as against the conviction but the appellate court is duty bound to focus his attention to reasons advanced by the learned Trial Judge in discarding the testimony of the witnesses and the circumstances under which the Trial Judge came to the conclusion that the prosecution has failed to establish the case beyond reasonable doubt and the same not having been done, the impugned judgment cannot be sustained. Mr. Tulsi also further contended that a bare perusal of the evidence of PWs. 7 and 13 would unequivocally indicate that they are wholly unreliable witnesses which is apparent from the omissions in their statement recorded under Section 161 and the High Court has merely brushed aside the same and then recorded the conviction of the appellant of the offence under Section 306. The learned Counsel appearing for the State, on the other hand, contended that the High Court as Court of Appeal was well within its power to interfere with an order of acquittal and good reasons having been given, the same could not be interfered with by the Court in exercise of power under Article 136 of the Constitution. To appreciate the correctness of the rival contentions, we have been taken through the judgment of the learned Sessions Judge as well as that of the High Court which clearly reveals that the High Court has not considered the reasons and grounds on which the learned Sessions Judge discarded the testimony of the two witnesses PWs 7 and 13 as well as the circumstances which led the Sessions Judge to come to the conclusion that the prosecution case has not been proved beyond reasonable doubt. On the other hand, the High Court has entered into an arena of surmises and conjectures and has interfered with an order of acquittal recorded by the Sessions Judge. Therefore, we have no hesitation to hold that within the parameters prescribed for interference with an order of acquittal, the High Court has acted beyond its jurisdiction, moreso, by not examining the grounds and reasons on which the Sessions Judge disbelieved the evidence of the two witnesses PWs 7 and 13 and also the circumstances which belied the prosecution case. That apart, we have also ourselves scrutinised the evidence of PWs. 7 and 13 and from the cross-examination of these witnesses it appears that the most material part of their evidence in Court had not been deposed to while being examined under Section 161, and therefore by no stretch of imagination, two witnesses can be held to be reliable witnesses so that the prosecution can rely upon their testimony for a conviction of the accused appellant. In the aforesaid premises, it must be held that the prosecution has utterly failed to establish its case beyond reasonable doubt. The appellant is entitled to be acquitted. We, therefore, set aside the impugned judgment of the conviction and sentence passed by the High Court and

acquit the appellant of the charges leveled against him. The bail bonds stands cancelled. The appeal is allowed accordingly.