

SUPREME COURT OF INDIA

Sanjiv Kumar

Vs.

State of Punjab

Crl.A.No 880 of 2005

(B.P. Singh and Tarun Chatterjee, JJ.)

07.11.2006

JUDGEMENT

B.P. Singh, J.

1. The appellant herein has appealed by special leave impugning the judgment and order of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 482-SB of 1993 dated 2-2-2005 affirming his conviction under Section 304-B and 498-A of the Penal Code, 1860 (IPC) and affirming the sentence of rigorous imprisonment for seven years and two years respectively on those counts. The sentences have been directed to run concurrently.

2. The facts of the case are that the appellant, Sanjiv Kumar was married to deceased, Raj Rani about 4/4 months before the occurrence which is alleged to have taken place on 24-8-1991. The case of the prosecution is that the matrimonial home of the deceased was at Village Gobindpura. Her parents resided at Village Khadayaal at a distance of 150 km. One of the brothers-in-law of the deceased, namely, Balwant Rai is a resident of Village Ghunder which is at a distance of about 5 km from Village Gobindpura.

3. The case of the prosecution is that fifteen days after her marriage when the deceased came to Village Khadayaal she complained to her family members that her husband, the appellant herein, as also her in-laws, namely, Sanjiv Kumar and Maya Devi (since acquitted) and Mrs Nirmala Devi, sister of the appellant (not sent up for trial) maltreated her on the ground that she had not brought sufficient dowry. They were pressing her to bring more dowry. The deceased was sent back to her matrimonial home but when she came again after a month, she again complained that the appellant and his sister had been maltreating her and beating her off and on. She was again persuaded to go back to her matrimonial home. She again came to her father's village a month later and this time she was not sent back to her matrimonial home. Later, the appellant assured that the deceased would not be maltreated and therefore, it was agreed that the deceased shall accompany her husband to her matrimonial home.

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4. About twenty days prior to her death, the deceased complained to her family members that she was not willing to stay in her matrimonial home as they were physically torturing her and maltreating her. On this, her brother, PW 4, Ramesh Kumar went to Village Gobindpura and brought her to Village Khadayaal. When he had come to Village Gobindpura, he had noticed his sister being abused by the appellant and his sister and they were making a demand of a colour television and a refrigerator as also a sum of Rs 10,000 on the pretext that they had to run a shop for the appellant. He assured them that he would send the amount to them as also the desired articles when they would be in a position to do so. However, the deceased accompanied her brother to Village Khadayaal twenty days before the occurrence.

5. The case of the prosecution is that on 20-8-1991 the appellant came to Village Khadayaal and assured the family members of the deceased that he would stay separately from his parents and that he will establish his own shop and they should arrange a sum of Rs 10,000 for him. The deceased was not agreeable to the demand of the appellant. In the meantime, Jeewan Kumar, PW 6, one of the neighbours came to their house and in his presence some discussion took place. After staying for two days at Khadayaal, the appellant left for Gobindpura but again came to the village on 23-8-1991 and persuaded the deceased to accompany her. The deceased accompanied the a appellant and both of them left for Village Gobindpura. PW 4 had assured the appellant that he would come to Village Gobindpura on Sunday along with Rs 10,000 as agreed. The appellant retorted by saying that if he did not come with the money on 25-8-1991 he may repent his sister's death.

6. On 24-8-1991 one Ram Sarup came and informed the family members of the deceased that the appellant and his sister had administered poison to £> the deceased and that the deceased was admitted in Rajendra Hospital at Patiala. On getting this news he went to the hospital along with his father, Wailaiti Ram, PW 5 and his mother and reached the hospital at about midnight on 24-8-1991. They came to know that the deceased had expired.

7. The police officer of Police Station Bhadson met PW 4 in Rajendra Hospital at about 8.00 a.m. on 25-8-1991 and recorded his statement on the c basis of which a formal first information report was drawn up and ultimately the appellant along with his parents was put up for trial. The trial court acquitted the parents of the appellant but found the appellant guilty of the offences under Sections 304-B and 498-AIPC.

8. The defence case is that there was no demand for dowry nor was the deceased ever harassed or maltreated by the appellant or his family members, d In his statement under Section 313 of the Code of Criminal Procedure (CrPC), the appellant took up a categorical defence and stated that the deceased had illicit relations with her brother-in-law, Balwant Rai of Village Ghunder. On coming to know of it, the appellant had objected to her visiting the house of Balwant Rai. It had come to his notice that his wife as also his father-in-law and sister-in-law had been going to Village Ghunder to the e house of Balwant Rai and they used to stay there for some time. He stated that a panchayat was convened and this matter was (2009) 16 SCC 487

discussed in the panchayat. On two occasions panchayat was taken to Village Khadayal. The members of the panchayat were Mohinder Singh, Sarpanch (DW 2); Jit Singh; Roop Singh; etc. They asked the parents of the deceased not to permit the deceased to visit the house of Balwant Rai. The deceased did not accept, their advice. Ten days before the occurrence he had gone to Village Khadayal and was returning to his village on 23-3-1991 along with the deceased. The deceased insisted that she would stay for a night at the house of Balwant Rai, her brother-in-law which was at a distance of about 5 km from her matrimonial home Gobindpura.

9. Though the appellant was not agreeable to going to the house of Balwant Rai, she in spite of his opposition went to the house of Balwant Rai and the appellant had to return to his village alone. Next morning i.e. on 24-8-1991 when the deceased came to Village Gobindpura he questioned her as to why she had stayed at the house of Balwant Rai. That resulted in a quarrel between the deceased on the one hand and the appellant and his mother on the other. Thereafter, according to the appellant, he went to irrigate _ his fields while his mother went to the cattle shed. His father left for Nabha where he was employed. While he was in his fields he was informed by Mohinder Singh, member of the panchayat that his wife had consumed some poisonous substance and therefore, he rushed to his house and removed the deceased to Primary Health Centre, Bhadson and thereafter to Rajendra Hospital, Patiala.

10. In his statement under Section 313 CrPC the appellant also stated that he had no desire to run any shop. They had sufficient lands, about 30 bighas, which he used to cultivate. There was no reason to demand a colour TV, fridge or Rs 10,000 from his father-in-law. In fact, only on 7-3-1991 they had purchased a new fridge and they had a black and white TV in their house even prior to the marriage. The case therefore, set up by the prosecution that they were demanding a TV set, a fridge and Rs 10,000 to start a business was false and only fabricated to falsely implicate the appellant and his family members.

11. PW 4, the brother of the deceased and the informant of the case deposed to the manner in which the appellant and his family members used to treat his sister. The prosecution on the strength of his evidence and that of his father Wailaiti Ram, PW 5 sought to establish the demand of dowry.

12. PW 4 has been cross-examined at length. The defence case was put to this witness, namely, that the deceased had illicit relations with her brother- in-law, Balwant Rai and this was objected to by the appellant and his family members and that panchayat was held and the members of the panchayat came to Village Khadayal and informed the father and other family members of the deceased regarding the illicit relationship with a request that the deceased should be prevented from going to the house of Balwant Rai. He has denied this suggestion. He has further denied the suggestion that on 23-8- 1991 when the appellant along with his wife (the deceased) was going to Village Gobindpura, the deceased insisted on going to Village Ghunder to the house of Balwant Rai and in fact did so even despite the opposition (2009) 16 SCC 487

of the appellant and that this incident gave rise to a quarrel next morning. The deceased had consumed poison in this factual background.

13. The evidence of Wailaiti Ram (PW 5), father of the deceased is to the same effect and the defence has put the same suggestions to this witness as well, which he has denied.

14. The defence examined DW 2 Mohinder Singh, Sarpanch in support of his case. Mohinder Singh resides in his house in the neighbourhood. He has deposed that the appellant was married to the deceased in Village Khadayaal. The marriage was a simple marriage ceremony and only chunni was put on the bride. Only eleven persons constituted the barat party. Two months later, the parents of the appellant had asked the deceased not to visit the house of Balwant Rai in Village Ghunder. A panchayat was also convened at the instance of the father of the appellant. Kulwant Rai, who had arranged the marriage as a go-between was also present in the panchayat and the panchayat advised the deceased not to visit the house of Balwant Rai.

15. One-and-a-half months later another panchayat was convened for the same purpose and the panchayat went to Village Khadayaal to the house of the parents of the deceased when PW 5, father of the deceased assured them that he would advise his daughter not to visit the house of Balwant Rai, her Mohinder Singh, member of the panchayat that his wife had consumed some poisonous substance and therefore, he rushed to his house and removed the deceased to Primary Health Centre, Bhadson and thereafter to Rajendra Hospital, Patiala.

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15. One-and-a-half months later another panchayat was convened for the same purpose and the panchayat went to Village Khadayaal to the house of the parents of the deceased when PW 5, father of the deceased assured them that he would advise his daughter not to visit the house of Balwant Rai, her brother-in-law. This witness claimed to have accompanied the deceased to the hospital at Bhadson. According to this witness, the police had made inquiries from him as well as the appellant and they had also taken their signatures on some papers. Since the condition of the deceased became serious she was removed to Rajendra Hospital, Patiala where she died at about 4.30 p.m. The parents of the deceased reached Rajendra Hospital, Patiala at about 5.00 p.m. According to this witness the appellant had never demanded dowry nor made any demand for fridge or TV which they already had even prior to the marriage. He also stated that the appellant was an agriculturist owning 30 ^ bighas of land and the father of the appellant was also an employee of the Punjab Electricity Board at Nabha.

16. Having regard to the evidence on record, the question arises as to whether the prosecution has proved its case beyond reasonable doubt. Under Section 304-B IPC the prosecution is required to establish that the death was caused by any burn or bodily injury or occurred otherwise than under normal circumstances, that such death took place within seven years of the marriage, and that it is shown that soon before her death the woman was subjected to cruelty or harassment by her husband or any relative of her husband for or in connection with any demand for dowry. If these facts are established by the prosecution, the presumption under Section 113-B, Evidence Act, 1872, arises and the court shall presume that such person who had subjected the woman to cruelty or harassment in connection with any demand for dowry shall be presumed to have caused the dowry death. The presumption that arises in such cases may be rebutted by the accused.

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17. If the accused successfully rebuts the presumption by pleading and proving a probable defence, the presumption under Section 113-B stands rebutted and the prosecution must prove its case without the aid of such presumption. It must logically follow that in a case where such presumption arises, the evidence, oral, circumstantial or documentary, adduced in defence must be examined by the court with a view to find whether the presumption stands rebutted. It is essentially a matter of appreciation of evidence.

18. In the instant case, there is no doubt that there is evidence to suggest that the deceased was subjected to harassment and cruelty by the appellant and his family members in connection with demand of dowry. The evidence of PWs 4, 5 and 6 does support the case of the prosecution in this regard. It is, however, contended on behalf of the appellant that though these witnesses have made such allegations, the allegations are not true.

19. In the first instance, it was submitted that the family of the appellant is relatively more prosperous than the family of the deceased. There is no allegation that any dowry was demanded at the time of marriage. The defence evidence also proves that the marriage ceremony was a simple ceremony where only the chunni ceremony was performed with only eleven or seventeen persons constituting the barat. It was further contended that the family of the appellant has considerable landed property, about 30 bighas of land and they are agriculturists. That apart, the father of the appellant was employed with the Electricity Board at Nabha. The appellant had no reason to demand Rs 10,000 for supporting a shop because he did not intend to start any such shop nor was there any necessity to do so. So far as demand of a fridge is concerned, only three weeks before the occurrence they had purchased a new fridge and therefore, the allegation regarding demand of articles and Rs 10,000 appears to be false. Even before the marriage, the appellant had in his house a black and white TV and therefore, there was really no need for the appellant to demand a TV. In any event, in these circumstances, it does not appear probable that for such petty things the appellant would commit the murder of the deceased. The learned counsel therefore argued that the prosecution evidence regarding demand of dowry must be rejected outright. There is no evidence to establish that such a complaint was ever made to anyone before the occurrence, nor had the parents of the deceased convened any panchayat making such a grievance, particularly in the background of the fact that the family of the appellant had twice convened panchayat and had even taken the panchayat members to the village of the deceased to complain about her conduct. It was, therefore, submitted that Section 304-B was not attracted to the facts of this case. It may be that the deceased committed suicide after she had a serious quarrel with her husband for her having stayed for the night at the house of Balwant Rai with whom the husband suspected her illicit relationship.

20. We cannot lose sight of the principle that while the prosecution has to prove its case beyond reasonable doubt, the defence of the accused has to be tested on the touchstone of probability. The burden of proof lies on the prosecution in all criminal trials, though the onus (2009) 16 SCC 487

may shift to the accused in given circumstances, and if so provided by law. Therefore, the evidence has to be appreciated to find out whether the defence set up by the appellant is probable and true.

21. We have earlier noticed the evidence on record which suggests that the appellant suspected the deceased of having an illicit relationship with her brother-in-law, Balwant Rai. The matter did not remain in the realm of suspicion, because the father of the appellant twice convened panchayats where this grievance was raised and considered by the members of the panchayat who advised the deceased not to visit the house of Balwant Rai. On one occasion the panchayat members went to Village Khadayal and met the family members of the deceased and secured an assurance from the father of the deceased, PW 5 that she will be advised not to visit Balwant Rai, her brother-in-law.

22. The appellant in his statement recorded under Section 313 CrPC stated that returning to his village on 23-8-1991 the deceased insisted on going to Village Ghunder which he opposed, but despite his opposition she went to the village of Balwant Rai and stayed for the night at Village Ghunder. When she returned next morning to Village Gobindpura, the appellant protested against her behaviour and that resulted in a quarrel between the two. The case pleaded by the appellant, while explaining the circumstances appearing against him under Section 313 CrPC cannot be said to be an afterthought, because the defence suggestions were put to the relevant witnesses when they appeared in the witness box.

23. It has been observed that defence witnesses are often untruthful, but that is not to say that in all cases defence witnesses must be held to be untruthful, merely because they support the case of the accused. The right a given to the appellant to explain the incriminating circumstances appearing against him serves a purpose, and cannot be ignored outright. In every case the court has to see whether the defence set up by the accused is probable, having regard to the totality of the facts and circumstances of the case. If the defence appears to be probable, the court may accept such defence. This is primarily a matter of appreciation of evidence on record and no straitjacket formula can be enunciated in this regard.

24. Unfortunately, the defence of the appellant and the evidence adduced by him, have not even been considered by the High Court. It was content with observing that the trial court rejected the defence case as there was no evidence to substantiate it. Moreover, the evidence of the same witnesses as against the parents of the appellant was not believed, and his parents were acquitted by the trial court. The non-consideration of the defence case by the High Court has resulted in miscarriage of justice, particularly because the conviction of the appellant is sought to be sustained on the strength of a presumption drawn against him by law. In such a case the consideration of the evidence in rebuttal becomes more significant.

25. Coming to the facts of this case we find that the defence set up by the appellant appears to be probable and sufficient to rebut the presumption against him. Apart from the appellant, (2009) 16 SCC 487

DW 2 Mohinder Singh, Sarpanch who was a member of the panchayat deposed in favour of the appellant. These facts cannot be ignored altogether. On the touchstone of probability, and having regard to the facts of this case, the defence of the appellant appears to us to be probable.

26. It cannot be lost sight of that the conviction of the appellant is based on the presumption drawn against him. There is no direct evidence to prove that he had administered any poisonous substance to the deceased. In all probability she had committed suicide. Ultimately, it is a matter of appreciation of evidence, and while we cannot say that the case of the prosecution is proved to be untrue, it is equally possible on the basis of the evidence on record to take the view that the defence case may also be true. Thus, applying the well-established principle that if on the basis of the same evidence, two views are reasonably possible, the one in favour of the accused should be preferred, we allow this appeal giving the benefit of doubt to the ^ appellant.

27. Accordingly, this appeal is allowed. The judgment and order of the High Court is set aside and the appellant is acquitted of the charges levelled against him. The appellant is in custody. He shall be released forthwith unless required in any other case.