**SUPREME COURT OF INDIA**

Rameshwar Dass

Vs.

State of Punjab

(S.B. Sinha and Harjit Singh Bedi JJ.)

13.12.2007

**JUDGMENT**

**S.B. SINHA, J :**

1. Appellant stood trial for commission of an offence under Section 304B of the Indian Penal Code in connection with unnatural death of his wife Sushma Rani.

2. They were married on 11.03.1986. An engagement ceremony took place twenty days prior thereto. A demand for dowry was made. It was met in part. A sum of Rs. 25,000/- by way of a demand draft was handed over to the husbands family at Mansa when shagun ceremony was performed.

Allegedly another sum of Rs. 11,000/- was paid in cash, as further demand was made by the family of the appellant. However, allegedly at the time of marriage the parents of the appellant demanded a further sum of Rs. 40,000/- in cash which could not be fulfilled. For non-fulfillment of the said demand, the deceased was allegedly tortured.

3. Appellant had sent a telegram on 16.04.1988 to Des Raj stating:

MUTUAL MISUNDERSTANDING REACH IMMEDIATELY RAMESHWAR On or about 4.06.1986, Sat Paul, brother of the deceased (PW-1), visited the house of his brother-in-law Raj Kumar (PW-2), which is situate in the village, where the incident took place and stayed there for the night.

On the morning of the next day, both of them visited the house of the appellant. Appellant and the deceased were found quarreling with each other on account of demand of dowry of Rs. 40,000/-. He tried to pacify them. Appellant left his house at about 9 a.m. Sat Paul and Raj Kumar also went to the town. However, when they returned after three or four hours, the house was found to be locked. On an enquiry having been made from the neighbours, they were informed that the deceased had been taken to hospital as she had consumed something. At about 1.30 p.m., they reached the hospital at Bhatinda and came to know that Sushma Rani had expired. She admittedly was pregnant at that time.

4. On receipt of a report in this behalf, ASI Mal Singh visited the hospital at about 1.20 p.m. It was at a distance of about 1 km. from the police post. Statement was made before him by Sat Paul at about 2.45 p.m.

The said statement was sent to the police station and the same was recorded at 4 p.m. on the same day on the basis whereof the F.I.R. was recorded.

The statement of PW-2 Raj Kumar was also recorded on the same day.

Appellant was arrested on 12.06.1988.

5. The learned Sessions Judge, Bhatinda convicted the appellant under Section 304B of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for seven years. An appeal filed thereagainst by the appellant was dismissed by the High Court by reason of the impugned judgment.

6. Mr. Rajiv K. Garg, learned counsel appearing on behalf of the appellant in support of this appeal inter alia would submit:

(i) The relation between the parties being cordial, the prosecution cannot be said to have proved its case of causing harassment by the appellant to his wife.

(ii) The prosecution has not been able to prove demand of dowry of Rs. 40,000/-.

(iii) Des Raj in his previous statement did not state about the demand of dowry of Rs. 40,000/-. A complaint petition was later on filed under Sections 405 and 406 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act which ended in acquittal by a judgment dated 5.11.1992 and a revision petition filed thereagainst by Des Raj was withdrawn on 2.03.1995 which clearly establishes innocence on the part of the Appellant.

(iv) The family of the deceased having suffered several deaths, the deceased started suffering from severe depression wherefor she was given a taveej which also goes to show that she had committed suicide.

(v) Even after the conviction, a settlement had been arrived at by and between the parties and in fact the cousin of the deceased was married to the appellant whereafter an application for compromise had also been filed.

7. The learned counsel for the State, on the other hand, supported the impugned judgment.

8. The fact that the deceased committed suicide is not in dispute. The only question is whether the appellant is guilty of commission of an offence under Section 304B of the Indian Penal Code. Before the learned Sessions Judge, the prosecution inter alia examined PW-1 Sat Paul, PW-2 Raj Kumar, PW-3 Dr. Balbir Singh, PW-4 Dr. S.K. Gupta, PW-5 Gurjant Singh Record Keeper), PW-6 Anup Krishan (Branch Manager State Bank of Patiala, Chandigarh), PW-7 G.S. Mann, (Manager, State Bank of Patiala, Bhatinda), PW-8 Gulab Chand (Supervisor Telegraph Office), Bhatinda, PW-11 Des Raj and PW-12 ASI Mal Singh.

9. The defence of the appellant was that she had been suffering from several diseases like depression, leucorrhea, abdominal trouble and was on medicine. He also denied that Sat Paul came to Bhatinda on 4.06.1988.

According to him, Shri Joginder Singh Bedi was requested to inform his in- laws on telephone about the death of Sushma, whereupon his father-in-law and other relations came in the night and demanded valuables including the ornaments and on his refusal to give the same, they had filed a

false case.

He also alleged that he was detained by the police in the hospital.

10. To prove mal-treatment of the deceased on the part of the appellant, three witnesses were examined, viz., PW-1 Sat Paul, PW-2 Raj Kumar and PW-11 Des Raj. PW-3 Dr. Balbir Singh examined the deceased when she was brought to the Civil Hospital. PW-4 Dr. S.K. Gupta conducted the post mortem examination at 9 a.m. on 6.06.1988. The report reads as under:

Post-mortem staining was present on the dependant part of the body. Rigor mortis was present. Eyes were congested enclosed. Fluid was coming out from nostrils and mouth. Level of the uterus was 3 above the umbilicus. Ants were creeping on the body. Multiple abrasions were seen on the waist line, neck, arm with clotted blood. These abrasions and clotted blood was post-mortem and is caused by ants. Lungs were congested. Stomach contained about 1/4th ounce of semi-digested food small intestines contained a small amount of chime. Large intestines contained some faecal matter. Bladder contained 2 ounces of urine. On dissection of the uterus, it was engorged with dilated veins and going into the abdomen about 2-1/2 above the umbilicus. A male dead foetus was lyng in the utering cavity. The length of the foetus was 37 cms and weight was 1-2/4 kgs. Some cutaneus fat was present. Meconium was present in the large intestines. There was a centre of ossification of the talus bone. Skin was red. No centre was seen in the upper end of femur.

The probable time that elapsed between injuries and death will be known after receiving the report of the Chemical Examiner, Patiala. The time between death and post-mortem was within 24 hours.

11. The Branch Manager of the State Bank of India Shri Anup Krishan PW-6 proved preparation of the demand draft of Rs. 25,000/- from Sector 22-D Branch of Chandigarh on 1.02.1986 as also a draft dated 19.03.1986 for a sum of Rs. 5,000/- which was issued from Chandigarh in favour of Rameshwar Dass (appellant) payable at Mansa. PW-7 G.S. Mann, Manager, State Bank of Patiala, Bhatinda proved payment of the said drafts to the appellant.

12. Apart from the said draft of Rs. 25,000/- dated 1.02.1986 which was encashed on 3.02.1986 at Mansa, the prosecution, thus, had also been able to prove payment of a sum of Rs. 5,000/- to the appellant by demand draft dated 19.03.1986.

13. The learned Sessions Judge relied upon the testimonies of Sat Paul and Des Raj. The court found corroboration in their testimonies from the fact of payment of money by way of demand drafts. The learned Sessions Judge also took into consideration the fact that some quarrel must have taken place between the spouses wherefor the telegram dated 16.04.1988 was sent to Des Raj by the appellant himself.

14. The fact that the death took place within seven years from the date of marriage is not in dispute. Commission of suicide by Sushma Rani is also not in dispute.

15. The only question which is required to be taken into consideration is as to whether the deceased soon before her death was subjected to cruelty or harassment by her husband for or in connection with the demand of dowry.

16. The defence of the appellant, as noticed hereinbefore, was that the relationship between the parties was cordial. An attempt was made to prove a few letters allegedly written by the deceased to the accused. The said letters were sought to be proved by one Joginder Singh Bedi. He was cited as

a witness on behalf of the prosecution. He had made his statement before the police under Section 161 of the Indian Penal Code. Evidently, he was given up. The learned Sessions Judge disbelieved his testimony opining that it is wholly unnatural that he would see the deceased writing a letter. He made a statement that the deceased was writing letters to him as also his wife. The said letters were not produced. The learned Sessions Judge also took into consideration the fact that there was nothing to show as was contended by the appellant that the investigating officer took possession of the said letters wherefor no seizure memo was prepared and handed over the same to the accused. Such a statement made by Joginder was held to be wholly unnatural. The High Court in its impugned judgment endorsed the said view.

17. A document in terms of Section 65 of the Evidence Act is to be proved by a person who is acquainted with the handwriting of the author thereof. DW-1 Joginder Singh Bedi claimed his acquaintance with the handwriting of the deceased on the basis of the letters written to him and his wife. He claimed that the deceased had written a large number of letters. It was, therefore, expected that some of them would be preserved. He did not produce any letter.

18. DW-1, as noticed hereinbefore, was a prosecution witness. He evidently was won over and, thus, prosecution did not examine him as its witness. Submission of Mr. Garg that he was the only independent witness who was available and was not examined must be considered from that angle. In response to the questions posed by the learned Sessions Judge, he even denied making any statement before the police. We wish that the learned Magistrate had recalled the investigating officer to bring the earlier statements of DW-1 to his notice. Unfortunately, no such step was taken.

Furthermore, we fail to comprehend as to why the father and brother of the deceased in the course of their depositions were not confronted with the said letters. In ordinary course, it should have been done. Why such a course of action was not taken recourse to is anybodys guess. The purported explanation of the appellant that the said letters were taken into custody of the investigating officer and later on returned to him is wholly unbelievable.

An investigating officer would not seize letters without preparing any seizure list. When the investigating officer visited the place of occurrence, the appellant was not present. Even a copy of the telegram which was found in the house had been seized. Other articles had also been seized. If seizure list had been prepared, there does not appear to be any reason whatsoever as to why the letters purported to have been written by the deceased would not be mentioned in the seizure list. We, therefore, do not find any reason to differ with the view taken by the learned Sessions Judge as also the High Court in this behalf.

19. So far as the submission of Mr. Garg that the subsequent complaint made by father of the deceased as against the appellant for commission of an offence under Sections 405 and 406 of the Indian Penal Code read with Sections 3 and 4 of the Dowry Prohibition Act ended in acquittal, is concerned, in our opinion, the same is not very relevant. The said complaint was in relation to a demand made before the marriage took place.

Allegations made therein were confined to non-return of the articles which was allegedly given to the bride for her own use. Mis-appropriation of the said articles was alleged on the part of the appellant therein. The learned Magistrate while passing the said judgment of acquittal inter alia opined that whereas the letter containing the draft of Rs. 5,000/- was addressed to Rameshwar Dass, it was encashed by Rameshwar Garg.

Even in the purported letters written by the deceased to the appellant, the name of the appellant was stated to be Rameshwar Dass Garg. The learned Magistrate, therefore, in our opinion, misdirected himself in making such observations but it is not necessary for us to express any opinion thereupon.

20. The said judgment of acquittal was passed on 5.11.1992, whereas the learned Sessions Judge passed his judgment on 18.10.1989 in the instant case. The charges in both the cases were not same. They were based on different transactions. Surprisingly, for reasons best known to the appellant, no attempt was made even to bring the said judgment dated 5.11.1992 to the notice before the High Court. Had an application for adducing additional evidence been filed, the High Court not only could have considered the same, it could have also called for the record of the said case to examine the matter at some length.

We, however, gave an opportunity to the appellant, in our anxiety to do justice to him, to file an application for bringing the same on records.

Such an application has been filed and we have taken into consideration the effect of the said subsequent judgment. As two cases, it will bear repetition to state, are on in respect of two different transactions, we are of the opinion that the same does not have any relevance in the present case. For the self- same reasons, the purported withdrawal of the criminal revision application filed by Des Raj thereagainst is also not of much relevance. Both PWs 1 and 2 in no uncertain terms stated about the demand of dowry of Rs. 40,000/-.

21. Apart therefrom, we have noticed hereinbefore that the fard-bayan was recorded in the hospital. When the investigating officer on receipt of the report went to the hospital, there was none. In normal course, the appellant should have been in the hospital. The first informant arrived at the hospital within a few minutes. He upon receipt of the news of his sisters death made a statement at the hospital at about 2.30 p.m. In a situation of this nature, he would not make a statement which is imaginary so as to implicate the appellant falsely. Apart from the oral testimony of the prosecution witnesses, the very fact that the appellant himself had sent the telegram asking Des Raj to come immediately is also a pointer to the fact that the spouses were not on good terms.

22. There appears to be a ring of truth in the statement of the first informant that a telegram was sent. He came to see his sister. His brother- in-law was the resident of the same village. After he spent his night at his brother-in laws place, he had visited the appellants house together with him. He tried to pacify them. Only when the appellant went out, they also went out and came back after a few hours to find the door closed. Appellant evidently tried to show that he had gone to office. It was a Sunday and as such the question of his going to office did not arise.

23. Another factor which is of some significance cannot also be lost sight of. The deceased was in the family way. She was carrying for 5-6 months.

Apart from the statement of her father and brother to that effect, even the post mortem report clearly proved the said fact. Des Raj in his testimony denied and disputed that a taveej was given to her because she was suffering from depression. According to him, it was given for the birth of a child. A pregnant woman ordinarily would not commit suicide unless relationship with her husband comes to such a pass that she would be compelled to do so.

24. An attempt had also been made to show that there was death of two children in the family as also a brother of the deceased. It was stated that one of sisters committed suicide and the taveej was

given for her warding off the evil spirits of her deceased sister. No such evidence has been brought on record.

25. We must also notice the conduct of the appellant.

In his statement under Section 313 of the Code of Criminal Procedure, the appellant accepted that at the time of his marriage, a demand for Rs.

40,000/- was made from the parents of the deceased and they showed their inability to pay the same.

ASI Mal Singh, investigating officer stated that when he had visited the Hospital, nobody was present. If the statement of the appellant is to be believed that he immediately rushed to the hospital, there was no reason of his not being there. According to him, he was detained in the hospital but the same has not been proved. It was only on 12.06.1988 that Sub-Inspector Sukhdev Ram had arrested him. Why he was not available for six days has not been explained by the appellant. Even there was nothing on record to show that it was either DW-1 or the appellant, who got the deceased admitted in the hospital. The prosecution has discharged its primary onus, as envisaged under Section 304B of the Indian Penal Code. In terms of Section 113B of the Indian Evidence Act, onus of proof was upon the appellant. [See State of Karnataka v. M.V. Manjunathegowda and Anr., (2003) 2 SCC 188] As the defence taken by the appellant has not been established, he cannot be held to have discharged the said onus.

26. We, therefore, are of the opinion that there is no merit in this appeal which is dismissed accordingly.

27. Before parting, however, we must notice the submissions made by Mr. Garg that 21 years have passed, the appellant has married a cousin of the deceased and an application has been filed by Des Raj for condoning the offence.

28. An offence under Section 304B of the Indian Penal Code is not compoundable. Why and under what circumstances the cousin of the deceased, if any, has been married to the appellant is not known. Only because such a marriage has allegedly taken place, the same by itself cannot be said to be a ground for rejecting the prosecution story. These contentions cannot also persuade us to impose a lesser punishment upon the appellant as in terms of Section 304B of the Indian Penal Code the minimum sentence is seven years rigorous imprisonment. Appellant has been awarded only the minimum sentence. We, therefore, cannot even interfere with the quantum of the sentence.

29. The appeal, for the reasons stated above, is dismissed.