

SUPREME COURT OF INDIA

Baldev Singh

Vs.

State of Punjab

Crl.A.No.....of 2008

(Dr. Arijit Pasayat and Harjit Singh Bedi JJ.)

04.08.2008

JUDGMENT

Dr. Arijit Pasayat, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Punjab and Haryana High Court dismissing the appeal filed by the appellant, while directing acquittal of the co-accused Narinder Kaur. Learned Sessions Judge, Amritsar, had convicted both, the present appellant and Surjit Kaur for the offence punishable under Section 304- B of the (in short "IPC") and had sentenced each of them to undergo rigorous imprisonment *Indian Penal Code, 1860* for 10 years and to pay a fine of Rs.1, 000/- in default of payment of fine to further undergo rigorous imprisonment for three months. It is to be noted that Narinder Kaur had faced trial along with the appellant Baldev Singh and Surjit Kaur but was acquitted of the charges by the trial court.

3. The case of the prosecution is as under:-

“Satwant Kaur @ Bholi was the sister of Rachhpal Singh (PW-4) and was married with Baldev Singh accused on 8.6.1991. Within about a month of their marriage, differences cropped up between the deceased and her husband as the mother-in-law and husband of the deceased started demanding a fridge and a T.V. Within three days of the marriage, the mother of Bholi had died, at the anniversary of their mother's death, Rachhpal Singh (PW-4) had collected a sum of Rs.12,000/- from the sale of paddy and Rs.8,000/- after encashing the National Saving Certificates and had given an amount of Rs.20,000/- to Baldev Singh. According to the complainant, for two months, after the payment there was no quarrel, but thereafter accused Baldev Singh, his mother Surjit Kaur and sister Narinder Kaur again started saying that at the time of the marriage adequate jewellery had not been given. The result was that the witness had again collected a sum of Rs.20, 000/- by encashing the Fixed Deposit Receipt and paid the amount to Baldev Singh. In the month of October, 1992, accused Baldev

Singh had fixed a date for the marriage of his younger brother and as the father of Rachhpal Singh (PW-4) and Satwant Kaur had died, Baldev Singh accused started asking for his share in the estate of his father- in-law. In view of this, Rachhpal Singh and his brothers Nirmal Singh and Avtar Singh had gone to the house of Satwant Kaur and there they tried to persuade the accused and other members of the family not to harass Satwant Kaur @ Bholi and assured them that in due course they would meet whatever was demanded by him. At this time Baldev Singh and the members of his family had told that they were not demanding any specific piece of land and that they would be satisfied in case an amount of Rs.1,00,000/- was given. Rachhpal Singh (PW-4) had then told accused Baldev Singh that they had decided to hold the anniversary of his father's death on 13th September, 1992 and they would pay the accused the amount of Rs.1, 00,000/- on that day. The details regarding the harassment that was being faced by Satwant Kaur were communicated by her to her brother Rachhpal Singh from time to time in various letters that were written by her. In these letters, (Ex. PW-4/A to Ex. PW-4/D) Satwant Kaur had given the details of the demands by her husband and in-laws and she had also been apprising her brothers of the treatment given to her by her mother-in-law, sister-in-law and the husband whenever she met them. On 2.9.1992 Rachhpal Singh had received a letter written by Satwant Kaur. This letter had been brought from Amritsar to Chandigarh by the wife of Amrik Singh, who in turn, had taken it to Pinjore to deliver the same to Rachhpal Singh. After going through the letter Rachhpal Singh had become very upset and had left for Amritsar and reached there about 7-8 P.M. During the night, he had stayed at the house of his second sister and in the morning of 3.9.1992 he had gone to the house of Satwant Kaur along with his brother-in-law Narinder Singh. On reaching the house, he found that Satwant Kaur was lying on a cot while her husband, sister-in-law and mother-in-law were standing nearby. On seeing him, Satwant Kaur had again indicated that the accused had harassed and beaten her regarding her inability to bring more money. She had also told Rachhpal Singh (PW-4) that she had consumed some poisonous substance as a result of which, she would die and requested him to ensure that the accused did not escape the rigours of law. At this point of time, Rachhpal Singh found the attitude of the accused very hostile and had told Narinder Singh that they should try to move out of the house and come back with some more relatives. Thereafter Rachhpal Singh and Narinder Singh had gone away from the house of the accused and with some relatives returned there at about 9.30 A.M. When they reached the house, they found that none of the accused was present in the house and even Satwant Kaur was not present there. On enquiry, it transpired that Satwant Kaur had been removed by the accused but the neighbours were not certain whether Satwant Kaur was dead or alive. Fearing that the accused may try to burn the dead body, the witness first went to the cremation ground and thereafter to various doctors. At about 6/6.15 P.M. they reached Guru Dev Hospital and found ASI Amrik Singh going inside and before him Rachhpal Singh made statement Ex. PW-4/A, which was reduced into writing and signed by the witness. He then accompanied the police to the mortuary, where he saw the dead body of Satwant Kaur.

Assistant Sub Inspector Amrik Singh (PW-7) had gone to Guru Nanak Dev Hospital, Amritsar after receipt of information regarding the death of Satwant Kaur and on reaching the hospital, had met Rachhpal Singh (PW-4) and recorded his statement. He thereafter made his endorsement thereon and sent the same to the police station for recording the formal FIR, Ex. PW-7/B. He had gone to the mortuary, prepared inquest report Ex. PW-1/B and got done the post-mortem on the dead body. Dr. R.K. Gorea (Pw-1) conducted the post mortem examination on 4.9.1992 at 5.00 P.M., who gave his opinion that the cause of death in this case was due to poisoning with organo phosphorus group of insecticide, which was sufficient to cause death in the ordinary course of nature. The Investigating Officer recorded the statements of the witnesses and prepared rough site plan. On completion of necessary investigation, accused were sent up for trial.

After the charge sheet was filed under Section 304-B IPC, trial was held as the accused persons pleaded innocence. In order to prove its case, the prosecution examined 7 witnesses. the statements recorded under Section 313 of the Code of Criminal Procedure, 1973 (in short `Cr.P.C.'), accused persons took the stand that they were falsely implicated in this case.

The trial court relied upon the evidence of PW.4 and PW.5 and found that their evidence was clear and cogent to the effect that the deceased was being harassed for not bringing adequate dowry and though some of the demands were satisfied by the relatives, the demands persisted. On account of such persistent demands, the deceased felt harassed and consumed poison and had ultimately died as a result thereof. With reference to the evidence of Dr. R.K. Gorea, PW.1, it was noted that the death of the deceased was as a result of consuming organo phosphorus group of insecticide and the death was unnatural and had taken place within 7 years of the date of marriage. The trial court, accordingly, found the appellant and Surjit Kaur guilty while directing acquittal of Narinder Kaur.

In appeal, the stand taken by the appellant was that with a view to falsely implicate the accused persons, the case was lodged. It was submitted that the deceased was deprived of her legitimate share in the ancestral property and because of this she was in mental depression leading to her committing suicide. It was pointed out that if the appellant on behalf of the deceased had asked for her legitimate share in the ancestral property that does not amount to dowry demand. The prosecution, on the other hand, relied on the evidence of PW.4 and PW.5 to show that the demand was not restricted only to the share in the ancestral properties but also to the other demands which were nothing but dowry demands. The High Court found substance in the plea of the prosecution and upheld the conviction.”

4. In support of the appeal, learned counsel for the appellant submitted that the evidence of PW.4 and PW.5 should not have been relied upon. The stand taken before the High Court that the demand related to the share in the ancestral property and cannot be termed as dowry

demand was reiterated. Additionally, it was submitted that custodial sentence of 10 years as imposed is harsh.

5. Learned counsel for the Respondent-State, on the other hand, supported the judgment of the trial court as upheld by the High Court qua the appellant.

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.”

7. In the instant case the marriage took place on 8.6.1991 and the death took place on 3.9.1992 other than in normal circumstances within 7 years of the marriage. The evidence of PW.4 and PW.5 were to the effect that the demand of dowry was made just before the deceased committed suicide.

8. 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."

9. 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)."

10. 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*¹).

11. The offence alleged against the respondents 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 respondents 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.

12. 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)."

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.”

13. 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 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.

14. It is true that demanding of her share in the ancestral property will not amount to a dowry demand, but the evidence of PW.4 and PW.5 shows that the demands were in addition to the demand for her share in the ancestral property. Certain letters which were brought on record clearly establish the demand for dowry. The conviction as recorded by the trial court and upheld by the High Court does not warrant any interference. However, the custodial sentence

appears to be on the higher side. The same is reduced to the minimum prescribed i.e. 7 years. In the ultimate result, with the modification of sentence, the appeal stands disposed of.

¹(1998 (3) SCC 309