SUPREME COURT OF INDIA

Satya Pal

Vs.

State of Haryana & Anr.

Crl.A.No.1447-1448of 2007

(A.K. Patnaik and S.J.MukhopadhayaJJ.)

13.03.2013

JUDGMENT

A.K. Patnaik J.

1. These are appeals against the judgment dated 16th March, 2007 of the Division Bench of the High Court of Punjab and Haryana in Criminal Appeal No. 334-DB/1997 and Criminal Appeal No.246 of 1997.

2. The facts very briefly are that a First Information Report was lodged by Sombir (the complainant) on 14th July, 1992 alleging therein, inter alia, that his sister Rajwanti was married to the appellant and after one or two months of the marriage she came home and told her mother that her in-laws were demanding dowry in the shape of a flour machine, electric motor with equipment to chop the fodder and these articles were given in December 1991, when his sister Rajwanti gave birth to male child and the in-laws of Rajwanti became happy. But thereafter Rajwanti came after sometime and told that her mother-in-law, sister-in-law and brother-in-law and husband(appellant) were demanding a fridge, cooler and TV, but the mother and father of Rajwanti said that if this demand is met the demands will go on increasing and Rajwanti left for her in-laws' house on 19th June, 1992. Thereafter on 12th July, 1992 at about 9:00a.m. the complainant had been to the house of Rajwanti and he saw that the appellant and Subhash pushed Rajwanti into a well and as a result Rajwanti died. A case was registered and investigation was conducted by the police and a charge sheet was filed against the appellant and his other family members under Sections 302/34 IPC and under Section 304B IPC.

3. At the trial, amongst others, the complainant was examined as P.W. 1 and the mother of Rajwanti(deceased) was examined as P.W. 2. The trial court, however, held in its judgment dated 9th October, 2006 that there was no satisfactory explanation about the inordinate delay of 51 hours in lodging the FIR with the police and it appears that the aforesaid time was utilised for implicating certain persons after consultations and deliberations. The trial court was thus of the opinion that the offence under Section 302/34 IPC framed against the accused

persons has not been proved by the prosecution beyond reasonable doubt. On the charge under Section 304B IPC, the trial court found that there were improvements in the evidence of PWs. 1 and 2 over their statements made before the police under Section 161 Cr.P.C. and accordingly, disbelieved Pws 1 and 2 and held that the demand of dowry as well as harassment and cruelty by the appellant or any of his relatives in connection with the demand for dowry had not been proved and hence the presumption under Section 113B of the Indian Evidence Act was not attracted and the appellant and his family member could not be held guilty under Section 304B IPC.

4. The State as well as the complainant went in appeal to the High Court in separate Criminal Appeal No. 334 -DB of 1997 and Criminal Appeal No. 246 of 1997 respectively and the High Court in the impugned judgment dated 16th March, 2007 found on the basis of the evidence of Pws. 1 and 2 that after about two months from November, 1991 when the earlier demand of dowry was fulfilled on the occasion of Chuchak ceremony, the appellant and his family members made a fresh demand of television, fridge, cooler and the deceased was subjected to beatings for this fresh demand and this led P.W. 1 to make a visit to the matrimonial house of the deceased in the month of June, 1992 and he persuaded the appellant and his family members not to make such demands but on 12th July, 1992, within one month of such visit, the death of the deceased took place in the matrimonial house. The High Court, further, held that since the prosecution has been able to prove both the fact of demand of dowry in the shape of television, fridge and cooler and the fact of harassment or cruelty meted out to the deceased soon before her death, the presumption under Section 113B of the Evidence Act was attracted and the appellant has not been able to rebut the presumption and was thus guilty of the offences under Section 304B as well as under Section 498A IPC.

5. At the hearing before us, learned counsel for the appellant, vehemently submitted that the view taken by the trial court on the evidence of P.Ws. 1 and 2 was not a correct view inasmuch as there were substantial improvements made by P.Ws. 1 and 2 in Court over their statements made to the police under Section 161 CrP.C. He submitted that the findings of the High Court on the basis of the evidence of P.Ws. 1 and 2 that the deceased was subjected to a subsequent demand of television, fridge and cooler and also was subjected to cruelty soon before her death were not at all correct. He submitted that the trial court was right in taking a view that the delay of 51 hours in lodging the FIR by P.W. 1 was not properly explained and, therefore, the prosecution story could not be believed.

6. We find on a reading of the judgment of the trial court that the trial court has held that the delay of 51 hours in lodging the FIR with the police by P.W. 1 was a good ground for rejecting the case of the prosecution that the accused persons were guilty of the offence under Section 302/34 IPC saying that this time of 51 hours could have been utilised for implicating some innocent persons after consultations and deliberations to make out a false story. The High Court has not held the accused persons guilty of the offence under Section 302/34 IPC presumably for the very same reason although an appeal was filed by the State as well as the complainant challenging the findings of the trial court in this regard.

7. So far as the charges under Section 3 04B and 498A IPC are concerned, we find that the trial court has disbelieved the evidence of Pws 1 and 2 on the ground that there have been improvements in their evidence over what they had been stated before the police under Section 161 CrPC and on the ground that there were discrepancies in their evidence. We have gone through the evidence of P.Ws 1 and 2 and we find that the High Court was right in coming to the conclusion on the basis of the evidence of P.Ws 1 and 2 that there was in fact a demand of television, fridge and cooler about two months after the earlier demand of dowry was met in November, 1991 on the occasion of the chuchak ceremony when the male child was born to the deceased and this subsequent demand was also followed by beatings and harassment so much so that a visit had to be made by P.W.1 to the matrimonial house of the deceased to persuade the appellants and his family members not to make the demands and soon thereafter the deceased died on 12th July, 1992.

8. We, however, find that P.W. 2 had not stated in her Statement [Exhibit DA] before the Police that P.W. 1 had not told her that the deceased was beaten by the appellant and his family members and that the deceased was closed in a room, but we find on a reading of the evidence of P.W. 1 that the deceased was subjected to beatings twice or thrice for demands of dowry. ^ Moreover, P.W 2 when asked whether she has told the Police about the aforesaid beatings given to deceased, she has said that she in fact, told the police about such beatings. The explanation to Section 161 Cr.P.C. states that an omission to state a fact or circumstance in the statement made to the police may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact. It was, therefore, for the Court to decide whether the omission in the statement of P.W 2 about the beatings given to the deceased before the police was significant enough for the Court to disbelieve that the deceased was beaten in connection with the demand for dowry. Considering the evidence of P.W. 1 and P.W. 2 in its entirety, we think that the High Court is right in coming to the finding that the deceased was not only subjected to a subsequent demand of dowry but also subjected to cruelty and harassment in connection with such demand for dowry soon before her death and that the trial court had not taken a correct view on the evidence of P.W. 1 and PW 2.

9. The High Court had also rightly drawn the presumption under Section 113B of the Evidence Act that appellant had caused the dowry death of the deceased within the meaning of Section 304B IPC and the appellant was required to rebut this presumption that he had caused the dowry death. The appellant did make an attempt to rebut this presumption in his statement under Section 313 Cr.P.C. while answering question No. 16. The appellant stated that the deceased had died a natural death because she was suffering from rheumatic pain (heart disease) and at that time she was being treated by Dr. Roop Chand at Satnali and she was also attended by Dr. Roop Chand on the day of her death. If this was the defence of the appellant in his statement under Section 313 Cr.P.C. it was incumbent upon him to have produced Dr. Roop Chand as a defence witness, but he has not done so. The resultis that the appellant has failed to rebut the presumption under Section 113B of the Indian Evidence

Act that it is he who had caused dowry death of the deceased within the meaning of Section 304B of the IPC.

10. We are therefore of the opinion that the High Court was right in reversing the judgment of acquittal against the appellant so far as the offences under Sections 304B and 498A are concerned and accordingly we dismiss the appeal. Since the appellant is on bail, we direct that his bail bond be cancelled and he be taken into custody forthwith to serve out the remaining sentence.