Gurnaib Singh

v.

State of Punjab

(Supreme Court Of India)

HON'BLE MR. JUSTICE DIPAK MISRA HON'BLE MR. JUSTICE K.S. RADHAKRISHNAN

Criminal Appeal No. 744 Of 2013 (Arising Out Of Slp (Crl.) No. 6183 Of 2012) | 10-05-2013

Dipak Misra, J.

1. Leave granted.

2. Respect of a bride in her matrimonial home glorifies the solemnity and sanctity of marriage, reflects the sensitivity of a civilized society and, eventually, epitomizes her aspirations dreamt of in nuptial bliss. But, the manner in which sometimes the brides are treated in many a home by the husband, in-laws r of great sand the relatives creates a feeling of emotional numbness in the society. It is a mattehame and grave concern that brides are burnt or otherwise their life- sparks are extinguished by torture, both physical and mental, because of demand of dowry and insatiable greed and sometimes, sans demand of dowry, because of the cruelty and harassment meted out to the nascent brides treating them with total insensitivity destroying their desire to live and forcing them to commit suicide a brutal self-humiliation of "Life".

3. Amarjeet Kaur, a young incipient lady, slightly more than two scores, daughter of an agriculturist, entered into wedlock with the appellant sometime in the early part of the year 1996. At the time of marriage, gifts were given as per the social customs. Sometime after the marriage, the matrimonial home, as the allegation of the prosecution unfurls, turned out to be an abode of indifference and harassment because of the demand of dowry of Rs.50,000/- by the husband and his family from her parents which could not be met due to their financial condition. Shattering the dreams that were harboured in her heart, she was turned out of her husband's house on many an occasion and, she was asked to return only if she could bring an amount of Rs.50,000/- from her parents. On 18.7.1998, Gurlab Singh, brother of the deceased, mustering courage and expecting that his sister would be treated with affection, took her to her matrimonial home and beseeched the husband and his mother to keep her as they were not in a position to give more dowry. Though she was allowed to remain in the matrimonial home, yet instead of show of affection even by affectation, she was showered with taunts and ridicules. On 27.7.1998, about 6.00 p.m., the anxious father, Sukhdev Singh, and the brother went to the house of the deceased to enquire about the well- being of the

deceased and found her dead body kept in the courtyard of the house. They were convinced that she had committed suicide because of the cruelty meted out to her by the husband and his relatives and, accordingly, lodged an FIR at Joga Police Station. After the criminal law was set in motion, the Investigating Officer carried out the investigation and got the autopsy conducted on the dead body by a board of doctors consisting of three members. The doctors who conducted the post mortem on the dead body sent the viscera for chemical examination and, eventually gave their opinion that the cause of death of the deceased was due to consumption of Organo Phosphorus, a group of insecticides, which was detected in the viscera and blood of the deceased. The investigating agency, after examining the witnesses and completing other formalities laid the charge-sheet before the competent court, and in due course, the appellant along with two other accused persons, namely, Mohinder Kaur, mother of the husband, and Ajaib Singh, brother, were sent up for trial for the offence punishable under Section 304B IPC.

4. The accused persons abjured their guilt and claimed to be tried. The prosecution, in order to bring home the charges, examined Gurlab Singh, PW-1, the brother of the deceased, Sukhdev Singh, PW-4, the father of the deceased, and PW-5, Numberdar of the village who have deposed about the ill treatment and demand of dowry. Dr. Rajinder Kumar Garg, PW-2, Dr. Vijay Sidhana, PW-3, and Dr. Asha Kiran, who had conducted the post mortem on the dead body of the deceased were examined to support the cause of death. That apart, certain other formal witnesses and the Investigating Officer were examined to substantiate the prosecution case.

5. The accused persons, in their statements under Section 313 of the Code of Criminal Procedure, denied all the incriminating circumstances and took the stand that the deceased was suffering from mental depression since marriage as she could not conceive and further she used to suffer fits. On the date of the incident, she suffered fits and was taken to the hospital but on the way, she breathed her last and, accordingly, her body was brought back home. It was also the stand of the accused persons that the parents of the deceased were informed and under their pressure, the police had been compelled to register a case. To substantiate the stance in the defence, it examined nine witnesses including Dr. Rajinder Arora, DW-1 and Dr. J.S. Dhillon, DW- 6, who had, as stated, treated the deceased for mental illness. Other witnesses were examined to establish the general behavioural pattern of the deceased.

6. The learned Additional Sessions Judge, by judgment and order dated 27.11.2001, convicted all the accused persons under Section 304B of IPC and sentenced each of them to undergo rigorous imprisonment for seven years and to pay a fine of Rs.10,000/- each, in default of fine, to suffer further rigorous imprisonment for one year.

7. Being dissatisfied, the convicts preferred Criminal Appeal No. 1472-SB of 2001 and the informant preferred Criminal Revision No. 1807 of 2002 seeking enhancement of sentence.

During the pendency of appeal before the High Court, the appellant No. 3, Mohinder Kaur, the mother- in-law, expired, as a consequence of which the appeal stood abated as against her. The High Court discarded the defence version that the deceased was suffering from any depression or mental illness. Appreciating the evidence, it came to hold that the deceased had committed suicide by consuming poison and hence, the death was otherwise other than normal circumstances; that the deceased was subjected to cruelty in connection with demand of dowry soon before her death and the said aspect had been established beyond doubt by the prosecution; and that the testimonies of Gurlab Singh, PW-1, Sukhdev Singh, PW-4, and Santokh Singh, PW-5, had remained unimpeached despite roving cross-examination; that Ajaib Singh, the brother of the husband, was a young boy prosecuting his studies in Class X at the time of the incident and, therefore, it could not be said that he could have been involved in any kind of demand of dowry or treating his sister-in-law with cruelty. Being of this view, the High Court acquitted Ajaib Singh but as far as the husband was concerned, it modified the sentence by setting aside the fine component. As a fall out of the aforesaid opinion, the appeal was allowed in part and the revision preferred by the informant paved the path of dismissal.

8. We have heard Mr. Abhay Kumar, learned counsel for the appellant, and Mr. V. Madhukar, learned counsel for the respondent-State.

9. Questioning the defensibility of the conviction, it is submitted by the learned counsel for the appellant that the prosecution has not been able to prove that there has been any demand of dowry or any torture in connection with such demand and, therefore, the conviction under Section 304B IPC could not have been recorded against the husband. It is urged by him that the principal ingredients of Section 304B IPC have not been brought home inasmuch the prosecution has failed to establish that soon before the death of the deceased, she had been subjected to cruelty and harassment by her husband and his relatives and such harassment was in connection with the demand of dowry. It is his further submission that the High Court as an Appellate Court has not scrutinized the evidence in proper perspective and has returned a finding that there was a demand of dowry and, hence, the judgment of conviction warrants a reversal.

10. Mr. V. Madhukar, learned counsel for the State-respondent, resisting the aforesaid submissions, has contended that marshalling of the evidence by the trial Court and the reappraisal by the High Court withstand close scrutiny and there is no justification to interfere with the concurrent finding of guilt. Alternatively, it is put forth by him that assuming that the offence under Section 304B IPC is not brought home, still the material on record would justify a conviction under Section 306 IPC which would not impel this Court to interfere with the quantum of sentence.

11. To appreciate the rival proponements advanced at the Bar, we think it apposite to refer to Section 304B IPC which deals with dowry death. It reads as follows:-

"304B. 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 the 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."

12. To get the said provision attracted, certain ingredients are to be satisfied. Scanning the said provision, this Court in Satvir Singh and Others v. State of Punjab and Another ((2001) 8 SCC 633) has stated thus:-

"The essential components of Section 304B are: (i) Death of a woman occurring otherwise than under normal circumstances, within 7 years of marriage. (ii) Soon before her death she should have been subjected to cruelty and harassment in connection with any demand for dowry. When the above ingredients are fulfilled, the husband or his relative, who subjected her to such cruelty or harassment, can be presumed to be guilty of offence under Section 304B. To be within the province of the first ingredient the provision stipulates that "where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances". It may appear that the former limb which is described by the words "death caused by burns or bodily injury" is a redundancy because such death would also fall within the wider province of "death caused otherwise than under normal circumstances". The former limb was inserted for highlighting that by no means death caused by burns or bodily injury should be treated as falling outside the ambit of the offence."

13. In this context, it is apposite to refer to Section 113A of the Evidence Act, 1872. The said provision is extracted below: -

"113A. Presumption as to abetment of suicide by a married woman. -When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband."

14. Section 113B, which provides for presumption as to dowry death, was inserted with a view to fight against the plague of dowry death. The said provision is as follows: -

"113B. 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 purpose of this section, "dowry death" shall have the same meaning as in section 304B of the Indian Penal Code."

15. Interpreting the aforesaid provisions in juxtaposition with Section 304B IPC, this Court, in Hira Lal and others v. State (Govt. of NCT), Delhi ((2003) 8 SCC 80), has expressed thus: -

"A conjoint reading of Section 113B of the Evidence Act and Section 304B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of "death occurring otherwise than in normal circumstances". The expression "soon before" is very relevant where Section 113B of the Evidence Act and Section 304B IPC are pressed into service. The 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 the prosecution."

The learned Judges, while proceeding further and interpreting the expression "soon before", opined thus: -

"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 cruelty or harassment concerned 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 death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence."

16. Keeping in view the aforesaid principles, it is to be seen whether the deceased was driven to commit suicide because of the harassment meted out to her in connection with demand of dowry. The learned trial Judge as well as the High Court has accepted the evidence of the brother, PW-1, the father, PW-4, and PW-5, Numberdar of the village that there was demand of dowry. The learned counsel for the appellant would submit that the finding recorded on this score is not based on the material on record but founded on surmises. To test the acceptation of the said submission, we have thought it apt to scrutinize the evidence of PWs-1, 4 and 5. PW-1, brother of the deceased, has only made a bald statement that the accused

persons were not satisfied with the dowry and were asking his sister to bring a sum of Rs.50,000/-. Similar is the testimony of PWs-4 and 5. That apart, nothing has been stated by the witnesses. It has been deposed by the father that the deceased had written two to three letters stating about the demand of dowry but the said letters have not brought in evidence. That apart, the brother, PW-1, in cross-examination, has refuted the same. It is also noticeable that PW-4 had not told his other daughters about the demand of dowry which is expected of a father. Thus, on the base of such sketchy evidence, in our considered opinion, it is difficult to concur with the finding that there was demand of dowry by the accused-husband and the harassment pertained to such a demand. The conclusion on this score, we are inclined to think, is based on certain a priori notions. When such a conclusion is arrived at which is manifestly erroneous and unsupported by the evidence on record, needless to say, this Court, in exercise of power under Article 136 of the Constitution, can re-evaluate and interfere. This has been so stated in Alamelu v. State ((2011) 2 SCC 385), Heinz India (P) Ltd. v. State of U.P. ((2012) 5 SCC 443) and Vishwanath Agrawal v. Sarla Vishwanath Agrawal ((2012) 7 SCC 288).

17. Presently we shall dwell upon the other limb of cruelty as engrafted under Section 498A. Section 498A deals with husband or relative of husband of a woman subjecting her to cruelty. The said provision along with the explanation reads as follows: -

"498A. 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 willful 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."

18. Clause (a) of the Explanation to the aforesaid provision defines "cruelty" to mean "any willful conduct which is of such a nature as is likely to drive the woman to commit suicide". Clause (b) of the explanation pertains to unlawful demand. Clause (a) can take in its ambit mental cruelty. It has come out in evidence that there was ill- treatment by the mother-in-law and the husband. The bride was in her early twenties. She was turned out of matrimonial home on certain occasions. This aspect has been established beyond doubt. There can be no dispute that in a family life, there can be differences, quarrels, misgivings and apprehensions

but it is the degree which raises it to the level of mental cruelty. A daughter-in-law is to be treated as a member of the family with warmth and affection and not as a stranger with despicable and ignoble indifference. She should not be treated as a housemaid. No impression should be given that she can be thrown out of her matrimonial home at any time. In the case at hand, considering the evidence of the prosecution witnesses, we are disposed to think that it is a case where the bride was totally insensitively treated and harassed. It is not that she has accidentally consumed the poison. She had deliberately put an end to her life. The defence had tried to prove that she was suffering from depression and because of such depression, she extinguished the candle of her own life. The testimony of the doctors cited by the defence has not been accepted by the learned trial Judge as well as by the High Court. They have not been able to bring in adequate material on record that she was suffering from such depression as would force her to commit suicide. On a perusal of the evidence of the said witnesses, we find that the finding recorded on that score is absolutely impeccable. In view of the same, the evidence brought on record that she was treated with cruelty and harassed deserves to be given credence to and, accordingly, we do so.

19. There is no dispute that no charge was framed under Section 306 IPC. Though the charge has not been framed under Section 306 yet on a question that has been put under Section 313, it is clear as crystal that they were aware that they are facing a charge under Section 304B IPC which related not to administration of poison but to consumption of poison by the deceased because of demand of dowry and harassment. It is major evidence in comparison to Section 306 IPC which deals with abetment to suicide by a bride in the context of clause (a) of Section 498A IPC. The test is whether there has been failure of justice or prejudice has been caused to the accused. In Gurbachan Singh v. State of Punjab (AIR 1957 SC 623), this Court examined the question of prejudice and held as under: -

"In judging a question of prejudice, as of guilt, courts must act with a broad vision and look to the substance and not to technicalities, and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself."

20. In Shamnsaheb M. Multtani v. State of Karnataka ((2001) 2 SCC 577), a three-Judge Bench, while dealing with the concept of "failure of justice", has opined thus:-

"23. We often hear about "failure of justice" and quite often the submission in a criminal court is accentuated with the said expression. Perhaps it is too pliable or facile an expression which could be fitted in any situation of a case. The expression "failure of justice" would appear, sometimes, as an etymological chameleon (the simile is borrowed from Lord Diplock in Town Investments Ltd. v. Deptt. of the Environment ((1977) 1 All ER 813). The criminal court, particularly the superior court should make a close examination to ascertain whether there was really a failure of justice or whether it is only a camouflage.

24. One of the cardinal principles of natural justice is that no man should be condemned without being heard, (audi alteram partem). But the law reports are replete with instances of courts hesitating to approve the contention that failure of justice had occasioned merely because a person was not heard on a particular aspect. However, if the aspect is of such a nature that non-explanation of it has contributed to penalising an individual, the court should say that since he was not given the opportunity to explain that aspect there was failure of justice on account of non-compliance with the principle of natural justice."

21. In Narwinder Singh v. State of Punjab ((2011) 2 SCC 47), while accepting the finding of the High Court that the prosecution has not been able to establish the charge under Section 304B IPC and had, therefore converted the punishment to one under Section 306 IPC, this Court observed that cruelty or harassment sans demand of dowry which drives the wife to commit suicide attracts the offence of abetment of suicide under Section 306 IPC. The Court further observed that mere omission or defect in framing charge would not disable the court from convicting the accused for the offence which has been found to be proved on the basis of the evidence on record. In such circumstances, the matter would fall within the purview of Sections 221(1) and (2) CrPC.

22. In K. Prema S. Rao and another v. Yadla Srinivasa Rao and others ((2003) 1 SCC 217), the Court, analyzing the evidence, ruled thus: -

"The same facts found in evidence, which justify conviction of the appellant under Section 498A for cruel treatment of his wife, make out a case against him under Section 306 IPC of having abetted commission of suicide by the wife. The appellant was charged for an offence of higher degree causing "dowry death" under Section 304B which is punishable with minimum sentence of seven years' rigorous imprisonment and maximum for life. Presumption under Section 113A of the Evidence Act could also be raised against him on same facts constituting offence of cruelty under Section 498A IPC. No further opportunity of defence is required to be granted to the appellant when he had ample opportunity to meet the charge under Section 498A IPC."

23. In the case at hand, the basic ingredients of the offence under Section 306 IPC have been established by the prosecution inasmuch as the death has occurred within seven years in an abnormal circumstance and the deceased was meted out with mental cruelty. Thus, we convert the conviction from one under Section 304B IPC to that under Section 306 IPC. As the accused has spent almost five years in custody, we limit the period of sentence to the period already undergone.

24. In spite of our modifying the conviction, we are compelled to proceed to reiterate the law and express our anguish pertaining to the manner in which the trial was conducted as it depicts a very disturbing scenario. As is demonstrable from the record, the trial was conducted in an extremely haphazard and piecemeal manner. Adjournments were granted on a mere asking. The cross-examination of witnesses were deferred without recording any

special reason and dates were given after a long gap. The mandate of the law and the views expressed by this Court from time to time appears to have been totally kept at bay. The learned trial Judge, as is perceptible, seems to have ostracized from his memory that a criminal trial has its own gravity and sanctity. In this regard, we may refer with profit to the pronouncement in Talab Haji Hussain v. Madhukar Purshottam Mondkar and another (AIR 1958 SC 376) wherein it has been stated that an accused person by his conduct cannot put a fair trial into jeopardy, for it is the primary and paramount duty of criminal courts to ensure that the risk to fair trial is removed and trials are allowed to proceed smoothly without any interruption or obstruction.

25. In Krishnan and another v. Krishnaveni and another (AIR 1997 SC 987), it has been observed that the object behind criminal law is to maintain law, public order, stability as also peace and progress in the society. The object of criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. The Court further proceeded to state that the recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement and these malpractices need to be curbed.

26. In Swaran Singh v. State of Punjab (AIR 2000 SC 2017), Wadhwa, J., in his concurring opinion, expressed his anguish pertaining to the adjournments sought in a criminal case which is built on the edifice of evidence that is admissible in law and the plight of witnesses in a criminal trial in the following manner: -

"It has become more or less a fashion to have a criminal case adjourned again and again till the witness tires and he gives up. It is the game of unscrupulous lawyers to get adjournments for one excuse or the other till a witness is won over or is tired. Not only that a witness is threatened; he is abducted; he is mained; he is done away with; or even bribed. There is no protection for him. In adjourning the matter without any valid cause a Court unwittingly becomes party to miscarriage of justice."

27. In the present case, as the documents brought on record would reveal, in the midst of examination of PW-1, learned counsel for the defence stated that he was not feeling well and was unable to stand in the court and the court adjourned the matter to 8.5.1999 for a period of four weeks. The said witness was not examined on the adjourned date but on 7.2.2000 and on that day, after the examination-in-chief was over, cross-examination was deferred at the instance of the learned counsel for the defence. Similarly, when PW-4 was examined, the case was adjourned on a prayer being made by the learned counsel for the defence. It is interesting to note that cross-examination of PW-2 eventually took place on 2.8.2000. On a perusal of the dates of examination-in-chief and cross-examination and the adjournments granted, it neither requires Solomon's wisdom nor Aurgus-eyed scrutiny to observe that the trial was conducted in an absolute piecemeal manner as if the entire trial was required to be held at the mercy of the counsel. This was least expected from the learned trial Judge. The criminal dispensation system casts a heavy burden on the trial Judge to have control over the proceedings. The criminal justice system has to be placed on a proper pedestal and it cannot

be left to the whims and fancies of the parties or their counsel. A trial Judge cannot be a mute spectator to the trial being controlled by the parties, for it is his primary duty to monitor the trial and such a monitoring has to be in consonance with the Code of Criminal Procedure.

28. In this context, a useful reference may be made to the decision in Ambika Prasad and another v. State (Delhi Admn., Delhi) (AIR 2000 SC 718). This Court, while commenting on the threat meted out to the informant in that case and adjournment sought by the counsel for the defense to cross-examine the said witness, opined as follows:-

"At this stage, we would observe that the Sessions Judge ought to have followed the mandate of Section 309 CrPC of completing the trial by examining the witnesses from day to day and not giving a chance to the accused to threaten or win over the witnesses so that they may not support the prosecution."

[Emphasis supplied]

Thereafter, the Court took note of the fact that after examination-in-chief of PW 4 was over on 6-2-1984, the counsel representing the accusedrequested the Court that because of his uncle's demise, he would not be in a position to cross-examine the witness and, therefore, recording of further cross-examination might be adjourned. Thereafter, the witness was cross-examined in the month of July, 1985. This Court observed that it was highly improper and even if the request for adjournment of the learned counsel for the accused was accepted, the cross-examination ought not to have been deferred beyond two or three days.

29. In State of U.P. v. Shambhu Nath Singh and Others ((2001) 4 SCC 667), the Court, while not appreciating the practice of a Sessions Court adjourning the case in spite of the presence of the witnesses willing to be examined fully, ruled thus:-

"We make it abundantly clear that if a witness is present in court he must be examined on that day. The court must know that most of the witnesses could attend the court only at heavy cost to them, after keeping aside their own avocation. Certainly they incur suffering and loss of income. The meagre amount of bhatta (allowance) which a witness may be paid by the court is generally a poor solace for the financial loss incurred by him. It is a sad plight in the trial courts that witnesses who are called through summons or other processes stand at the doorstep from morning till evening only to be told at the end of the day that the case is adjourned to another day. This primitive practice must be reformed by the presiding officers of the trial courts and it can be reformed by everyone provided the presiding officer concerned has a commitment towards duty."

30. In the said case, the Court referred to the conditions laid down by the legislature under Section 309 of the Code of Criminal Procedure which deals with the power to postpone or adjourn proceedings and proceeded to state that the first sub-section of Section 309 of the

Code mandates on the trial courts that the proceedings shall be held expeditiously but the words "as expeditiously as possible" have provided some play at the joints and it is through such play that delay often creeps in the trials. Even so, the second limb of the sub- section warrants for a more vigorous stance to be adopted by the court at a further advanced stage of the trial. That stage is when the examination of the witnesses begins. The legislature which diluted the vigour of the mandate contained in the initial limb of the sub-section by using the words "as expeditiously as possible" has chosen to make the requirement for the next stage (when examination of the witnesses has started) to be quite stern. Once the case reaches that stage, the statutory command is that such examination "shall be continued from day to day until all the witnesses in attendance have been examined". The solitary exception to the said stringent rule is, if the court finds that adjournment "beyond the following day to be necessary" the same can be granted for which a condition is imposed on the court that reasons for the same should be recorded. Even this dilution has been taken away when the witnesses are in attendance before the court. After so stating, the Court held that in such situations, the court is not given any power to adjourn the case except in extreme contingency for which the second proviso to sub-section (2) has imposed another condition by providing further that when the witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing.

31. It is apt to note here that this Court expressed its distress that it has become a common practice and regular occurrence that the trial Courts flout the legislative command with impunity.

32. In Mohd. Khalid v. State of W.B. ((2002) 7 SCC 334), a three-Judge Bench did not approve the deferment of the cross-examination of the witness for a long time and, deprecating the said practice, it observed as follows:-

"Unnecessary adjournments give a scope for a grievance that the accused persons get a time to get over the witnesses. Whatever be the truth in this allegation, the fact remains that such adjournments lack the spirit of Section 309 of the Code. When a witness is available and his examination-in-chief is over, unless compelling reasons are there, the trial court should not adjourn the matter on the mere asking."

33. Recently, in Akil @ Javed v. State of Delhi (2012 (11) SCALE 709), the Court, after surveying the earlier pronouncements, has stressed on the compliance of the procedure and expressed its anguish that the trials are not strictly adhering to the procedure prescribed under the provisions contained in Section 231 along with Section 309 of the CrPC, and further emphasised that such adherence can ensure speedy trial of cases and also rule out the possibility of any maneuvering taking place by granting undue long adjournment for mere asking.

34. We have expressed our anguish, agony and concern about the manner in which the trial has been conducted. We hope and trust that the trial courts shall keep in mind the statutory

provisions and the interpretation placed by this Court and not be guided by their own thinking or should not become mute spectators when a trial is being conducted by allowing the control to the counsel for the parties. They have their roles to perform. They are required to monitor. They cannot abandon their responsibility. It should be borne in mind that the whole dispensation of criminal justice at the ground level rests on how a trial is conducted. It needs no special emphasis to state that dispensation of criminal justice is not only a concern of the Bench but has to be the concern of the Bar. The administration of justice reflects its purity when the Bench and the Bar perform their duties with utmost sincerity. An advocate cannot afford to bring any kind of disrespect to fairness of trial by taking recourse to subterfuges for procrastinating the same.

35. Consequently, the appeal is partly allowed and the appellant be set at liberty if his detention is not required in connection with any other case.