

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 828 OF 2009
(Arising out of S.L.P. (Crl.) No.7146 of 2008)



Raman Kumar

..Appellant

versus

State of Punjab

..Respondent

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. Leave granted.
2. Challenge in this appeal is to the judgment of a Division Bench of the Punjab and Haryana High Court, dismissing the appeal filed by the State of Punjab in respect of co-accused Satish Kumar, Madan Lal and Asha while upholding the conviction of the present appellant Raman Kumar. The learned Sessions Judge, Gurdaspur had directed acquittal of the appellant and two co-accused persons who faced trial for alleged commission of offences punishable under Sections 304B and 498-A of the Indian Penal Code, 1860 (in short the 'IPC')
3. Background facts in a nutshell are as follows:

Suman Bal (hereinafter referred to as the 'deceased') was married to the appellant on 11.4.1992. On 13.8.1992 she came to her maternal home with her husband on Raksha Bandhan and stayed there for the night. At 8.00 a.m. while going back to her husband, she started weeping. Her father Sham Lal PW-6 gave her a wrist watch and Rs. 300/-. He also separately gave her Rs.2,000/-. On 16.8.1992 at 8-00 A.M., Surinder Kumar (husband of sister

of Sham Lal) met Sham Lal and told him that he received information from Raman Kumar that Suman Bala was burnt in the night at 2.00 A.M. and was admitted to Muni Lal Chopra Hospital at Amritsar. Sham Lal went to the hospital but Suman Bala was unconscious. His statement was recorded by SI Tirath Ram to the effect that Suman Bala had put kerosene on herself and finished her life, fed up with her in-laws. This led to registration of First Information Report (in short the 'FIR'). SI Tirath Ram PW-9 prepared inquest report and made application for post-mortem examination. He took steps for investigation and after investigation, the accused were sent up for trial. PW-3 Dr. R. K. Gorla conducted post-mortem examination on 18.8.1992 at 4.50 P.M. According to him, cause of death was due to shock and as a result of burns, which were sufficient to cause death.

Evidence on record shows that PW-1 Dr. Balbir Singh Randhawa examined Suman Bala on 16.8.1992 at 6.10 A.M. and found 75% burns. She had four months pregnancy. PW-4 Dr. Gurmanjit Raj had joined PW-3 Dr. R.K. Gorla in conducting the post-mortem examination. PW-2 Satish Chander, Draftsman prepared site plan. PW-5 Surinder Kumar deposed that in-laws of Suman Bala were not dissatisfied about dowry. He resiled from statement made during investigation. In cross-examination, he admitted that

the accused were able to give satisfactory reply as to how Suman Bala was burnt. PW-6 Sham Lal deposed that his daughter told him in the hospital that she was caught hold by appellant and Satish, her mother-in-law Asha Rani put kerosene oil on her and she was set ablaze by the appellant. She also wrote letter Ex.PF about her being unhappy. Surinder Kanta (PW-7) mother of the deceased Suman Bala deposed that Suman Bala was being harassed for dowry. Manoj Kumar PW-8, brother of deceased, deposed that Suman Bala was being harassed for dowry and Raman Kumar had demanded Rs. 1 lakh and she was burnt in the night intervening 15/16.8.1992. She died on 17.8.1992. Tirath Ram PW-9 is the Investigating Officer. He proved the investigation conducted by him. Harwant Singh PW-10 was a formal witness. Dr. Rajesh Kumar Mahajan PW-11 deposed that Suman Bala was admitted in his hospital on 16.8.1992 at 6-00 A.M. She told him that she was burnt in accidental fire. She was referred to Muni Lal Chopra Hospital for further treatment.

The accused denied the prosecution's allegations. Raman Kumar stated that he never demanded dowry or maltreated Suman Bala. She was burnt in accidental fire while igniting the gas stove. She was treated firstly at Batala and then at Amritsar. Satish Kumar stated that he was living

separately from Raman Kumar and he never harassed the deceased. Madan Lal and Asha Rani also took the same stand. Dass Gobind Singh DW-1, Driver of the Ambulance, stated that he accompanied Raman Kumar and Suman Bala from Batala to Amritsar on 16.8.1992. He also proved the entry made by Dr. Inderjit Singh at Batala Ex.DC.

The trial Court after considering the evidence on record, held that case of the prosecution was proved against Raman Kumar but gave the benefit of doubt to Satish, Madan Lal and Asha Rani.

The High Court after referring to the respective stand of the parties in an abrupt manner held that the acquittal of the appellant was not legal and proper. It however held that the trial Court was right in holding that the so called dying declaration stated by Sham Lal (PW-6), Smt. Surinder Kanta (PW-7) and Manoj Kumar (PW-8) was not fully reliable. The view taken was a possible view and no interference was called so far as the acquittal of Satish, Madan and Asha Rani are concerned. As regards the present appellant it was held that though the letter Ex.PF was inconsequential but the evidence of the parents and brother of the deceased about her harassment for dowry cannot be brushed aside. Her death took place within

four months of the marriage and no other possible reason was put forward why she died. The plea of accidental fire was not reliable. Reference was made to the evidence of PW-7 the mother of the deceased who stated that the deceased had complained of demand of Rs.1,00,000/- and harassment for dowry. Similar version was given by Manoj Kumar (PW-8) the brother of the deceased. With this only observation the appeal of the appellant was dismissed.

4. Learned counsel for the appellant submitted that the High Court has erroneously analysed the evidence of the so called witnesses. It did not notice that there were lots of exaggerations and statements which were not made during investigation but were made in Court. The trial Court and the High Court were not justified in placing reliance on such evidence.

5. Learned counsel for the respondent-State on the other hand supported the judgment of the High Court.

6. It is of some significance to note that in the history sheet of the hospital where the deceased was treated it has been categorically stated that while the deceased tried to ignite a gas stove the deceased suddenly caught fire. The trial Court was of the view that there was no evidence to show as to who recorded the statement. It discarded the evidence of PW-11 on the

ground that the history sheet Ex. DA does not make it clear that in whose presence the history sheet was prepared as it did not bear the signature of any doctor and handwriting. It was observed that the evidence of a doctor Rajesh Kumar (PW-11) did not make it clear as to who has written Ex.DA. It was also observed that there was no reason indicated as to how PW-11 was conversant with the hand writing of doctor Bhupinder Kaur who purportedly recorded the statement. The High Court did not even refer to this aspect but in a cryptic manner upheld the conclusions of the trial Court. It is of significance that Dr. Balbir Singh Randhawa (PW-1) in the cross examination had categorically stated that the history sheet of the patient Ex.DA was written by Dr. Bhupinderjit Kaur in Ex.PA. He also stated that the treatment was prescribed by him. It was entered in the bed head ticket made by doctor Bhupinderjit Kaur who was on duty on that day. He also stated that though the patient was in shock but she was not unconscious. He stated that he identified the signatures of Dr. Bhupinderjit Kaur and handwriting in the bed head ticket. In the FIR, reference was made to a letter purportedly to have been written by the deceased. This letter has been marked as an exhibit.

7. A bare reading of the letter (Ext. PF) clearly shows that there is not even a whisper about demand but the deceased had categorically stated that she had asked for the money and the articles on her own. The trial Court erroneously held that in the letter there was reference to demand of dowry. Strangely, the High Court held that even though the letter Ex.PF was inconsequential but the evidence of the relatives about the harassment for dowry cannot be brushed aside. As rightly submitted by learned counsel for the appellant there were improvements in the statements recorded in Court. The witnesses PWs 6 and 7 introduced certain aspects for the first time. Significant statement in this regard is that of Sham Lal (PW-6). In Court he stated that the deceased told him in the hospital that kerosene oil was poured on her by the accused. He accepted during his examination that no such allegation was made in his statement recorded in terms of Section 161 of the Code of Criminal Procedure, 1973 (in short the 'Code'). Similarly, Surinder Kanta (PW-7) in Court stated that the deceased informed her about the demand of Rs.1,00,000/- by her-in-laws and about her giving Rs.20,000/-. This was not stated during investigation under Section 161 of Code as is evident from Ex.DA. In Court PW-7 stated that the deceased was beaten and mistreated on 14.8.1992 and 15.8.2002 and no such statement was made

during investigation. Additionally, no such allegation was made by PW-8 the complainant about this aspect in the FIR.

8. In the statement in Court PW-7 stated that the deceased had told him that A-1 and A-2 caught hold of her and A-1 poured oil over her body and set her on fire by throwing match stick. No such statement was made during investigation. Similarly, that is not also the version of PW-6. In Court PW-7 stated that all the accused persons i.e. the present appellant and the acquitted accused persons maltreated her. No such allegation was made while the witness was examined under Section 161.

9. In Hazarilal v. State of M.P. (2007 (8) SCALE 555) it was inter-alia observed by this Court as follows:

“8. The evidence of PWs 1 and 2 show that they spoke about the dowry to be the basis for suicide. The High Court came to the conclusion that because the deceased had given birth to a child there was no reason for her to commit suicide. The evidence of the parents of the deceased PWs 1 and 2 was only relatable to dowry. The High Court held that there was no question of demand of dowry, and in fact, appellant was financing the father of the deceased PW1. There being no other material to show as to how the deceased was being harassed or subjected to cruelty, the conclusion of the High Court that because the deceased committed suicide there must be some harassment and cruelty is insupportable and indefensible. There was no material to substantiate this conclusion. Merely on surmises and conjectures the conviction could not have

recorded. There is a vast difference between “could have been”, “must have been” and “has been”. In the absence of any material, the case falls to the first category. In such a case conviction is impermissible.”

10. In Harjit Singh v. State of Punjab, (2006) 1 SCC 463 it was observed as follows:

“16. A legal fiction has been created in the said provision to the effect that in the event it is established that soon before the death, the deceased was subjected to cruelty or harassment by her husband or any of his relatives; for or in connection with any demand of dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death. Parliament has also inserted Section 113-B of the Evidence Act by Act 43 of 1986 with effect from 1-5-1986 which reads as under:

“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 had 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 304-B of the Indian Penal Code (45 of 1860).”

11. The scope and ambit of Section 304-B IPC was examined by this Court in Kaliyaperumal and Anr. v. state of Tamil Nadu (2004 (9) SCC 157).

12. Section 304-B IPC deals with dowry death which reads 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 purposes of this subsection, ‘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.”

13. The provision has application when 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 relatives of her husband for, or in connection with any demand for

dowry. In order to attract application of Section 304-B IPC, the essential ingredients are as follows:

- (i) The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance.
- (ii) Such a death should have occurred within seven years of her marriage.
- (iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.
- (iv) Such cruelty or harassment should be for or in connection with demand of dowry.
- (v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

14. 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 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 had 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).”

15. The necessity for insertion of the two provisions has been amply analysed by the Law Commission of India in its Twenty-first Report dated 10-8-1988 on “Dowry Deaths and Law Reform”. Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry-related deaths, the legislature thought it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background that 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 woman concerned must have been “soon before her death” subjected to cruelty or harassment “for or in connection with the demand for 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.

16. 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. The 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. 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 in by the prosecution. “Soon before” is a relative term and it would depend upon the circumstances of each case and no straitjacket 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 the 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 who 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 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.”

17. The High Court's judgment is not only sketchy but also devoid of reasons. Various factors highlighted above would go to show that the prosecution has squarely failed to establish the accusations so far as the appellant is concerned. Therefore, the appeal deserves to be allowed which we direct. The appellant is to be set at liberty forthwith unless to be required in connection with any other case.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(ASOK KUMAR GANGULY)

New Delhi,
April 24, 2009