

(2008) 12 P&H CK 0198

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 98-SB of 1993

Suresh Kumar @ Shashi

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: Dec. 24, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 313
- Evidence Act, 1872 - Section 113B
- Penal Code, 1860 (IPC) - Section 304B, 498A

Hon'ble Judges: Sham Sunder, J

Bench: Single Bench

Advocate: R.S. Cheema, with Ms. Tanu Bedi, for the Appellant; A.K. Jindal, A.A.G., Haryana, for the Respondent

Final Decision: Allowed

Judgement

Sham Sunder, J.

1.This appeal is directed against the judgment of conviction and the order of sentence, dated 16.02.1993, rendered by the Court of Additional Sessions Judge (I), Panipat, vide which, it convicted Suresh Kumar @ Shashi (now appellant), for the offences, punishable under Sections 304-B and 498-A IPC, and sentenced him to undergo rigorous imprisonment for a period of 10 years, for the offence, punishable u/s 304-B IPC; and further sentenced him to undergo rigorous imprisonment for a period of 2 years, and pay a fine of Rs. 1000/-, and in default, to undergo rigorous imprisonment for a period of 6 months, for the offence, punishable u/s 498-A IPC. The substantive sentences were, however, ordered to run concurrently.

2. The facts, in brief, are that Savita daughter of Harbans Lal, was married to the accused on 22.10.1986. At the time of marriage Savita was graduate from Marinda House, Delhi, while the accused was only a matriculate. She was brought up and groomed at Bombay and Delhi. The marriage was performed, in five star hotel, at

Delhi, and earlier, engagement ceremony had taken place, in another posh hotel of Delhi. The father of Savita had spent about Rs. 7 to 8 lacs, at the time of her marriage. On 14.04.1990, Savita, in order to commit suicide, sprinkled flit upon her body, and set her ablaze. She suffered burn injuries. She was got admitted in a hospital. On 14.04.1990, at about 10.00 A.M., Sh. K.K. Bali, the then Judicial Magistrate 1st Class, Panipat, recorded the dying declaration of Savita exhibit PA/4, after obtaining the certificate P/3 from Dr. Ravinder Kumar, that she was fully conscious and fit to make statement. In her dying declaration, she stated that she was alone in the house. She further stated that she put flit upon her and set her ablaze. She further stated that her husband wanted divorce from her, but she did not want to separate herself, from her husband, during her lifetime. She further stated that her husband used to quarrel with her, all the times. It was further stated by her, that her husband, after her marriage, used to subject her, to cruelty, in connection with the demand of dowry. It was further stated by her, that, in the presence of others, his behaviour was normal, but when she was alone, in the house, she used to be tortured by him. It was further stated by her, that she wanted to live with her husband for-ever, and did not want to leave him. It was further stated by her, that her husband, used to tell her that he would make her to lead the life of a stray dog. It was further stated by her that even then she wanted to live with her husband.

3. On the basis of the said statement of Savita, an FIR u/s 498-A IPC, was registered, against the accused. Later on, she was shifted to Safdarjang Hospital, where she, ultimately, died on 27.06.1990, on account of the burn injuries, sustained by her, in the aforesaid manner. The dead-body of Savita was subjected to post-mortem examination, on 27.06.1990. Consequently, the offence, u/s 304-B IPC, was added, in the FIR. The accused was arrested on 13.08.1990. The statements of the witnesses, were recorded. Siri Chand, Sub Inspector, PW8, went to the place of occurrence, and got the same photographed. The rough site plan PG was prepared with correct marginal notes. Spray pump, its small tank, one hair pin, one gas lighter, one piece of cloth partly burnt, alongwith some ash, were taken into possession, after converting the same into parcels. After the completion of investigation, the accused was challaned.

4. On his appearance, in the Court of the committing Magistrate, the accused was supplied the copies of documents, relied upon by the prosecution. After the case was received by commitment, in the Court of Sessions, Charge under Sections 498-A and 304-B IPC, was framed against him, to which he pleaded not guilty, and claimed judicial trial.

5. The prosecution, in support of its case, examined Sh. K.K. Bali, then then Judicial Magistrate 1st Class, Panipat (PW1), Dr. Ravinder Kumar (PW2), Harish Kumar, draftsman (PW3), Gopi Ram, ASI (PW4), Satbir Singh, ASI (PW5), Rakesh Kumar, photographer (PW6), Pirthi Raj Vij, a near relation of Savita (PW7), Siri Chand, SI

(PW8), Satish Sharaf, brother of Savita (PW9), Dr. Arvind Thergaonkar, who conducted post-mortem examination, on the dead body of Savita (PW10), Dr. Pardeep Chawla, Criminal Appeal No. 98-SB of 1993 4 Medical Officer (PW11), Dr. A.K. Tiwari (PW12), and Swaran Singh, DSP (PW13). Ram Piari and Davinder Kumar, were given up, as unnecessary. Thereafter, the Public Prosecutor for the State, closed the prosecution evidence. 6. The statement of the accused, u/s 313 Cr.P.C., was recorded. He was put all the incriminating circumstances, appearing against him, in the prosecution evidence. He pleaded false implication. It was admitted by him, that his marriage with Savita was performed on 22.10.1986 in Hayat Hotel, New Delhi, and thereafter they started residing in Panipat. It was stated by him, that he was already having a Maruti car of his own, bearing registration No. DBG-3848 and, as such, there was no question of making any demand, in respect thereof. It was further stated by him, that he belonged to a well to do family of Panipat. It was further stated by him that Savita was educated in a posh college namely Marinda House, at Delhi. He further stated that she was brought up at Delhi, as also, at Bombay. It was further stated by him, that she was a double graduate, while he was only a matriculate and, as such, there were temperamental differences between them. It was further stated by him, that she was sore, about his being unsophisticated, ill mannered, and used to pick up quarrels with him, on one pretext or the other. It was further stated by him, that on the persistent demand of Savita, he had taken a separate house bearing No. 571-R, Model Town, Panipat, and had shifted to the same, three months prior to 14.04.1990, the date of incident, but even then, she was not satisfied. He denied that he ever subjected Savita, to cruelty, in connection with the demand of dowry. He also examined Ramesh Malik, DW1, the mediator, in arranging the marriage, in his defence. Thereafter, he closed his defence evidence.

7. After hearing the Public Prosecutor for the State, the Counsel for the accused, and, on going through the evidence, on record, the trial Court convicted and sentenced the accused, as stated above.

8. Feeling aggrieved, the instant appeal, was filed by the appellant.

9. I have heard the Counsel for the parties, and have gone through the evidence and record of the case, carefully.

10. The Counsel for the appellant, at the very outset, submitted that Savita was never subjected to cruelty, in connection with the demand of dowry, at any point of time, after her marriage, by the accused. He further submitted that the alleged dying declaration PA/4, made by Savita, is incoherent. He further submitted that the concerned Magistrate, who recorded the same, did not try to find out from Savita, as to what happened, in the morning, what was the matrimonial discord between them, and what was her education. He further submitted that the Magistrate concerned did not satisfy himself, as to whether, Savita was fit and conscious to make statement. He further submitted that there was total lack of care and

awareness, on the part of the Magistrate, in recording the said statement. He further submitted that the accused belonged to a well to do family, and already had a Maruti car, and there was, therefore, no question of demand of the same, or any other dowry articles or cash, in the shape of dowry. He further submitted that Pirthi Raj and Satish Sharaf, made material contradictions, and improvements, in their statements, in the Court, over their previous statements, with regard to the alleged demand of dowry. He further submitted that the conduct of the accused also goes a long way, to prove, that he was not, at all, at fault. He further submitted that had the accused been, at fault, he would not have called Pirthi Raj, a close relation of Savita, living nearby, when she, set her ablaze. He further submitted that since Savita was educated, in a posh college, namely Marinda House at Delhi and was brought up at Bombay and Delhi, she was highly sophisticated, whereas, the accused was only a matriculate and, as such, there was unbridgeable gap, between the couple, as a result whereof, she was depressed. He further submitted that even no letter was ever written by Savita, to her parents, regarding the alleged demand of dowry, or subjecting her to cruelty by the accused, at any point of time. He further submitted that even Savita was unable to bear a child, after more than three years of her marriage with the accused and, thus, she remained depressed and, on account of that reason, she set herself ablaze. He further submitted that the other dying declarations of the deceased, recorded subsequently, before her death, were contradictory to the one, recorded on 14.04.1990 and, as such, no reliance thereon, could be placed. He further submitted that no offences, under Sections 304-B and 498-A IPC, were committed, by the accused. He further submitted that the trial Court was wrong in recording conviction and awarding sentence.

11. On the other hand, the Public Prosecutor for the State, submitted that the dying declaration was recorded by the Magistrate, after satisfying himself that Savita was fit and conscious to make the same. He further submitted that even in the dying declaration, Savita, in clear-cut terms, stated that she was being harassed, in connection with the demand of dowry, by her husband, and that was why she ended her life. He further submitted that the evidence produced by the prosecution, being cogent and convincing, the trial Court, was right, in recording conviction and awarding sentence.

12. After giving my thoughtful consideration, to the rival contentions, raised by the Counsel for the parties, in my considered opinion, it is a fit case, in which, the appeal, should be accepted, for the reasons, to be recorded hereinafter. For constituting the offence, punishable u/s 304-B IPC, the prosecution, was required to prove that the death of a married woman took place, within 07 years of her marriage, otherwise than under normal circumstances, and that soon before her death, she was maltreated, in connection with the demand of dowry, by her husband or his relative(s). Once these ingredients are proved, then statutory presumption, u/s 113-B of the Evidence Act, arises, that the accused committed the offence, punishable u/s 304-B IPC. In the instant case, it is proved from the evidence,

on record, and even it is not denied by the accused, that his marriage with Savita was performed on 22.10.1986, she sustained burn injuries, in his house on 14.04.1990, and, ultimately, died on account of the same on 27.06.1990. The death of Savita, thus, on account of burn injuries i.e. otherwise than under normal circumstances, took place on 27.06.1990 i.e. within 07 years of her marriage. Two ingredients for constituting the offence, u/s 304-B, therefore, stood proved from the evidence on record.

13. Coming to the third ingredient, as to whether, Savita was subjected, to cruelty, in connection with the demand of dowry, soon before her death, it may be stated here, that the evidence produced by the prosecution, in that regard, was wrongly held to be reliable by the trial Court. In the dying declaration PA/4, it was stated by Savita that after the Criminal Appeal No. 98-SB of 1993 8 marriage, the accused used to maltreat her, in connection with the demand of dowry. In the dying declaration, the specific details, with regard to the time period and the items of dowry allegedly demanded were not given by Savita. With regard to the demand of dowry, it could only be said to be a vague statement made by Savita. No reliance, on this part of the statement of Savita, therefore, could be placed. Coming to the other evidence produced by the prosecution, that Savita was subjected to cruelty, in connection with the demand of dowry, it may be stated here, that the same is also unreliable, as would be discussed hereunder. Savita was the daughter of the brother-in-law of Pirthi Raj, PW7. He was residing at Panipat. He stated that about two and a half or three months after the marriage, Savita, told him that the accused was harassing her, in connection with the demand of a car. He further stated that she also told him, at that time, that the accused had been complaining about the dowry, which according him, was not sufficient. He further stated that Savita had gone to Delhi in 1987, and had stayed with her mother, for two months, as she was being harassed by the accused, on account of the demand of dowry. He further stated that when he came to know about this, he contacted Suresh Kumar, accused, and asked him to behave properly. On his persuasion, Suresh, went to Delhi. It was further stated by him that, later on, he was informed by Satish Sharaf, brother of Savita, that on account of the demand raised by the accused, he had paid Rs. 15,000/-, and, thereafter, Savita was taken to Panipat, to her, matrimonial home. During the course of his cross-examination, it was deposed to by him, that he stated before the Deputy Superintendent of Police, about the factum, that when he came to know that the accused was harassing Savita, he contacted him and asked him to behave properly. He further deposed that he stated before the DSP that on his persuasion, Suresh, accused, had gone to Delhi and later on, he was informed by Satish Sharaft, that on account of demand of the accused, he had paid him Rs. 15,000/-, and thereafter Savita, had been taken to Panipat, to her, matrimonial home. When his attention was drawn to his statement exhibit DA, this fact was not found mentioned therein. During the course of his cross-examination, this witness further deposed that he had not stated in his statement exhibit DB, before ASI Siri Chand, that the

accused was interested in a car by way of dowry. He, in the same breath, stated that this fact was, however, told by him, to the Deputy Superintendent of Police. When his attention was drawn to exhibit DA, this fact, was not found mentioned therein. Satish Sharaf, PW9, is the brother of Savita, deceased. In his examination-in-chief, he deposed that about two months, after the marriage, Savita came to him, at New Delhi, and told him that her husband was demanding a car and some more cash amount. He further deposed that, in December, 1987, he had come down to Panipat. He, however, deposed that Suresh, accused, came to him at New Delhi, where he repeated the demand for car and cash amount and he had given him Rs. 15,000/-, in cash to him. He further deposed that his sister told him that till her death Suresh, was demanding a car.

When the attention of the witness was drawn to exhibit DC, his statement, the fact that he had given Rs. 15,000/-, to the accused, was not found recorded therein. He also deposed, in his cross-examination, that Suresh, accused, came down to Delhi, and asked for cash amount and the car from him. When his attention was drawn to DC, his statement, this fact was not found recorded therein. It means that both these witnesses, made improvements, over their previous statements, in the Court, with regard to the demand of Rs. 15,000/- and the car, by the accused in the shape of dowry. Had the accused actually demanded a sum of Rs. 15,000/-, from Savita, as also a car from her, or from Satish Sharaf, both the aforesaid witnesses, would have certainly stated so in their statements, made first in point of time, before the Police. This clearly goes to show that, no such demand was made, but the same was only concocted, later on, just with a view to bring the case, within the purview of the provisions of Section 304-B IPC. In *Yudhistir v. State of M.P.*, 1977 S.C. (Crl.) 684, the principle of law, laid down, was to the effect, that when a particular fact deposed to by the witness, does not find mention in the FIR and the statement, u/s 161 Cr.P.C., it is an improvement and it cannot be considered. In *K. Lakshman Rao v. The Public Prosecutor State of Andhra Pradesh & another*, 1979 Cri LJ (SC) 696, the principle of law, laid down, was to the effect that the improvements throw doubt, on the prosecution story. The principle of law, laid down, in the aforesaid cases, is fully applicable, to the facts of the present case. Since both these witnesses made material improvements, over their statements, made by them, during the course of investigation, with regard to the demand of car and cash amount of Rs. 15,000/-, it could be said that they were telling lies in the Court. Any demand, if allegedly, made by the accused, from Savita, or her brother or Pirthi Raj, two and a half months, after the marriage, could not be said to be one made, soon before her death. Even otherwise, the conduct of the accused, clearly showed that he never tortured Savita, in connection with the demand of dowry. It is proved from the evidence, on record, that the accused was already having a Maruti car with him, before the marriage. Had the accused tortured Savita, in connection with the demand of dowry, he would have been the last person, to call Pirthi Raj, her near relation, residing in the neighbourhood, when she set herself ablaze. In that event, he would have certainly

kept the matter, under wraps. Not only this, Savita, was taken to the hospital, by the accused and Pirthi Raj, aforesaid. Even no letter was ever written by Savita, she being a highly educated lady, from a posh college of Delhi. Even there is nothing, on record, to show that on account of her alleged torture, at any point of time, in connection with the demand of dowry, any complaint was earlier made to the Police or the Panchayat, by her parents, at any point of time, till her death, that she was subjected to cruelty, in connection with the demand of dowry, by the accused. It was, thus, not proved, from the evidence, on record, that Savita was subjected to cruelty, in connection with the demand of dowry, at any point of time, after her marriage much less soon before her death. The third ingredient required for constituting the offence, punishable u/s 304-B IPC, therefore, did not stand proved, from the evidence, on record and, as such, the presumption u/s 113-B of the Evidence Act, did not operate against the accused. Though this Court is not required to probe into, as to what was the other possible cause for commission of suicide by Savita, yet the same is quite apparent from the evidence, on record, that she did so, due to depression that she was unable to give birth to a child, which is the most priceless and valuable gift, for a married woman, as she achieves complete womanhood, only after the birth of a child, and that the accused was a complete mismatch for her, being less educated, unsophisticated, and ill-mannered, as compared to her. The trial Court, was thus, wrong in holding that the accused tortured Savita, in connection with the demand of dowry, soon before her death. Such finding of the trial Court, is based on the complete misreading of evidence, and is reversed. The submission of the Counsel for the appellant, carries substance, and is accepted.

14. The Counsel for the appellant placed reliance on *Vithal Sadashiv v. State of Maharashtra*, 1994 CLJ 2035, to contend that dying declaration PA/4, was not reliable. It may be stated here, that, in the instant case, the dying declaration of Savita was recorded by the Magistrate concerned, after obtaining the opinion of the doctor, as to whether, she was fit and conscious to make statement. The doctor opined that she was fit and conscious to make statement. Thereafter, the Magistrate recorded her dying declaration. Even throughout the period, the dying declaration of the deceased, continued to be record, the doctor remained present. The Magistrate, thus, fully satisfied himself that Savita, was fit and conscious to make statement. In *Vithal Sadashiv's* case (supra), it was held that certificate from the doctor, and endorsement from him, that patient is not only conscious but in a fit condition to make dying declaration, is must and absence of such a certificate, rendered the said dying declaration, to be invalid. In the instant case, Sh. K.K. Bali, Duty Magistrate, moved an application on 14.04.1990, on reaching the hospital, seeking the opinion of the doctor, as to whether, Savita was fit and conscious to make statement. The doctor vide endorsement P/3, opined that she was fully conscious and fit to make statement. It means that the doctor certified that she was fit and conscious to make statement. The dying declaration, thus, recorded by Sh.

K.K. Bali, the then Judicial Magistrate 1st Class, Panipat, PW1, of Savita, fit in with the principle of law, laid down, in Vithal Sadashiv's case (supra). In this view of the matter, the submission of the Counsel for the appellant, being without merit, must fail, and the same stands rejected.

15. Coming to the other dying declarations, allegedly made by Savita, subsequently, before her death, before the SDM, Delhi, and a Police official, it may be stated here, that the same were not proved, in accordance with the provisions of law, nor exhibited. Under these circumstances, those dying declarations, were not taken into consideration, by the trial Court. Since those dying declarations, were not proved, nor exhibited, this Court, cannot rely upon the same, to come to the conclusion, as to whether, the same were contradictory to the one made by Savita, on 14.04.1990, which is exhibit PA/4. Had those dying declarations, been proved, in accordance with the provisions of law, and exhibited, the matter would have been different. In this view of the matter, the submission of the Counsel for the appellant, being without merit, must fail and the same stands rejected.

16. No other point was urged, by the Counsel for the parties.

17. The judgment of conviction and the order of sentence, rendered by the trial Court, are not based, on the correct appreciation of evidence and law, on the point, and the same are liable to be set-aside.

18. For the reasons recorded above, the appeal is accepted. The judgment of conviction and the order of sentence are set-aside. The appellant is acquitted of the charge, framed against him. If the appellant is on bail, he shall stand discharged of his bail bonds, and if, he is in custody, he shall be set at liberty, at once, if not required, in any other case. The Chief Judicial Magistrate concerned, shall comply with the judgment immediately.