

(2011) 01 SC CK 0095

Supreme Court of India

Case No: Criminal Appeal No. 1322 of 2004

Bansi Lal

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: Jan. 14, 2011**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313, 319
- Evidence Act, 1872 - Section 113A, 113B
- Penal Code, 1860 (IPC) - Section 304, 304B, 306, 498A

Citation: AIR 2011 SC 691 : (2011) AIRSCW 674 : (2011) 1 ALD(Cri) 704 : (2011) 2 GLH 969 : (2011) 2 GLR 969 : (2011) 1 JCC 480 : (2011) 1 JCR 259 : (2011) 5 JT 373 : (2011) 2 KCCR 98 SN : (2011) 4 PLJR 15 : (2011) 1 RCR(Criminal) 753 : (2011) 1 RLW 357 : (2011) 1 S

Hon'ble Judges: P. Sathasivam, J; B. S. Chauhan, J**Bench:** Division Bench

Advocate: Mahabir Singh, Rishi Malhotra and Prem Malhotra, for the Appellant; Manjit Singh, AAG, Rao Ranjit, Harikesh Singh and Kamal Mohan Gupta, for the Respondent

Final Decision: Partly Allowed

Judgement

B.S. Chauhan, J.

This criminal appeal has been preferred against the judgment and order of the Punjab and Haryana High Court at Chandigarh dated 5th May, 2004 in Criminal Appeal No. 708-SB of 1998, by which the conviction of the Appellant by Additional Sessions Judge, Gurgaon, vide judgment and order dated 22nd August, 1998 and 25th August, 1998 for offences under Sections 498A, 304B and 306 of Indian Penal Code, 1860 (hereinafter referred as "IPC") and awarding the sentence to undergo rigorous imprisonment for two years and to pay a fine of Rs. 500/- and in default of payment of fine to further undergo rigorous imprisonment for two months, has been upheld. However, for the offence u/s 304B IPC sentence to undergo for ten years and pay a fine of Rs. 2,000/- in default of payment of fine, to further undergo rigorous imprisonment for six months, has been reduced to seven years with fine.

2. Facts and circumstances giving rise to this case are that the Appellant was married to Sarla (deceased) on 4th April, 1988. An FIR was lodged by Shyam Lal (PW.4) father of Sarla (deceased) on 25th June, 1991 making allegations that the Appellant, his mother, brother and sister-in-law had consistently harassed his daughter Sarla (deceased) by making dowry demand i.e. a scooter. She had been maltreated by them. After one year of marriage, Sarla (deceased) came and stayed with her family for about 14 months. It was only after convening a panchayat of close relatives, she had returned to her matrimonial home. Again they maltreated and insisted for the demand of a scooter, thus, she had been subjected to cruelty, harassment by demand of dowry to the extent that she committed suicide on 25th June, 1991, at her matrimonial home.

3. After investigation of the case, the prosecution filed the chargesheet against the Appellant and his mother Smt. Shanti Devi and charges were framed against them under Sections 498A, 304B and 306 IPC. The said two accused pleaded not guilty, thus, they were put on trial. It was on 17th May, 1995, that in view of the evidence of the prosecution witnesses, the learned Sessions Judge in exercise of his power u/s 319 of the Code of Criminal Procedure, 1973 (hereinafter called Cr.P.C.) summoned the other two accused Ashok Kumar, brother and Smt. Shakuntala, sister-in-law of the Appellant and charges were reframed against all the four accused under Sections 498A, 304B and 306 IPC vide order dated 6th July, 1995.

4. In order to substantiate its case, the prosecution examined several witnesses including complainant Shyam Lal (PW.4), Gulshan (PW.5), brother of Sarla (deceased), Dr. B.B. Agarwal (PW.1), Shri Arjun Singh Yadav, ASI, (PW.6), Constable Jai Pal (PW.2), Shri Mool Chand Punia, Draftsman (PW.3), and other formal witnesses.

5. While making their statement u/s 313 Code of Criminal Procedure, the accused persons denied all the allegations against them and set up the defence as under:

Sarla was in love with some other person. She was forced to marry with accused Bansi Lal against her will, due to which she felt suffocated and committed suicide, leaving a suicide note to that effect. There was no demand of Scooter.

Further, accused Ashok Kumar (A.3) and Shakuntala (A.4) pleaded that they had been living separately from the Appellant and his mother and they had no involvement so far as the demand of dowry was concerned. In defence only three witnesses i.e. Bal Kishan, an official of HSEB (DW.1), Vidya Nand, an Inspector of Food and Supplies Department (DW.2) and Surender Singh, Sarpanch of the village Gram Panchayat (DW.3) were examined only to prove that accused Ashok Kumar (A.3) and Shakuntala (A.4) were living separately from the Appellant and his mother Smt. Shanti Devi.

6. After considering the entire evidence on record and the submissions made by the prosecution as well as defence, the trial court convicted the Appellant and his mother Smt. Shanti Devi under Sections 498A, 304B and 306 IPC and awarded the

sentences as referred to hereinabove. The court acquitted Ashok Kumar and Shakuntala of all the charges against them. The Trial Court did not award any separate sentence u/s 306 IPC.

7. Being aggrieved, the Appellant and his mother Smt. Shanti Devi preferred Criminal Appeal No. 708-SB of 1998 which has been disposed of by the impugned judgment and order dated 5th May, 2004, acquitting Smt. Shanti Devi, not being beneficiary of the demand of dowry, as only scooter had been demanded but dismissed the appeal so far as the present Appellant is concerned. However, considering the facts and circumstances of the case, the sentence u/s 304B IPC has been reduced from 10 years to 7 years. Hence, this appeal.

8. Shri Mahabir Singh, learned senior counsel appearing for the Appellant, has submitted that no charge could be brought home against the Appellant under any of the penal provisions as there was no demand of dowry by the Appellant. The harassment was not in close proximity of time of death. The prosecution itself had submitted that Sarla (deceased) wanted to marry one Shiv Parkash Singh and thus, she was not happy with the Appellant. She had left a suicide note to that effect and the said note had been exhibited before the trial court as Ex.P2. Thus, the appeal deserves to be allowed.

9. On the contrary, Shri Rao Ranjit, learned advocate appearing for the State, has vehemently opposed the appeal contending that the facts and circumstances of the case do not warrant interference with the concurrent finding of facts recorded by the courts below. The suicide note Ex.P2 has to be ignored as it has not been proved as per requirement of law. No witness has been examined for comparing the handwriting of the deceased nor it has been signed by the deceased. It had not even been shown to father of the deceased i.e. Shyam Lal (PW.4), complainant or her brother Gulshan (PW.5). More so, it had been the defence of the Appellant while making his statement u/s 313 Code of Criminal Procedure. Thus, he should have led evidence to substantiate the defence. Thus, the appeal lacks merit and is liable to be dismissed.

10. We have considered the rival submissions made by the learned Counsel for the parties and perused the material on record.

The admitted facts of the case remain as under:

- (i) There was no demand of scooter at the initial stage of marriage in 1988.
- (ii) Complainant Shyam Lal (PW.4) and Gulshan (PW.5) had deposed that there had been consistent and persistent demand of scooter by the Appellant.
- (iii) After one year of the marriage, when Sarla (deceased) came to the house of her parents, she stayed with them for a period of 14 months.

(iv) During this period of 14 months, no attempt had been made by the Appellant to call her newly wedded wife back to the matrimonial home.

(v) A Panchayat of very close relatives was convened and they had assured the parents and family members of Sarla (deceased) that Appellant and his other family members would behave properly with Sarla (deceased) and she would not be maltreated or humiliated or subjected to any kind of cruelty for demand of dowry.

(vi) It was on this assurance that Sarla (deceased) came back to stay with the Appellant at her matrimonial home.

(vii) Sarla committed suicide by hanging herself on 25th June, 1991.

(viii) The Appellant or any of his family members did not inform Shyam Lal, (PW.4), complainant or any of his family members about the death of Sarla (deceased).

(ix) Shyam Lal (PW.4) and Gulshan (PW.5) reached her matrimonial home alongwith others getting information from other persons.

(x) Shyam Lal (PW.4) immediately lodged the FIR against the Appellant and other family members and, set the law in motion.

(xi) Sarla (deceased) was found dead at her matrimonial home when she stayed with the Appellant and other family members. They had not furnished any satisfactory explanation as for which reason and under what circumstances she had committed suicide.

11. So far as the theory of love affair of Sarla (deceased) is concerned, it has been disbelieved by the courts below. The Trial Court dealt with the issued observing as under:

If the husband was doubting her fidelity towards him there was no reason for him to have come with his father and other relatives to the parents of the deceased to take her back after 14 months of her stay with her parents. It also cannot be said that the deceased was not having any liking for her husband and was frustrated because she allegedly could not marry the person of her choice. Rather the circumstances are otherwise. Had she developed hatred for her husband, there was no reason for her to join him after 14 months of her staying away from the matrimonial home. There was every reason for her to believe the husband and his relatives that demand of dowry and other torture and maltreatment would not be there. Better sense definitely, after such a lapse of time, was naturally to be expected to have dawned on them. Parents of the deceased also did not create any hassles as they felt satisfied from the assurance of the accused on this score. At any rate melodramatic story of her love affairs with some one and her frustration in her married life with accused Bansi Lal can hardly be taken as genuine. If it was so, she could not have continued to wait to die for her alleged lover for three long years, having consummated the marriage with her husband and having cohabited with

him all- through she was with him in the matrimonial home.

12. Again, the High Court has dealt with the issue elaborately and recorded the following findings:

Much has been said by the learned Counsel about Ex.P-2, the note allegedly recovered by the Investigating Officer. In my considered view, this document has to be totally rejected from consideration in evidence for the simple reason that no nexus of the deceased has been established with this document. There is no evidence worth the name from the side of the prosecution or from the defence, which may indicate that the writing Ex.P-2 was, in fact, in the hand of Sarla deceased. Shyam Lal and Gulshan P Ws when stepped into the witness-box do not say even a word that the document Ex.P-2 is written in the hand of Sarla deceased. Even the defence counsel did not put any specific question/suggestion to these witnesses about authorship of this document, knowing very well that ASI Arjun Singh Yadav, Investigating Officer had taken it into possession from the almirah of their house. The Investigating Officer (PW6) in his cross examination has stated that the diary, letter and ball-pen were lying in the room and he enquired about the author of the said letter Ex.P-2 and it was revealed that the same was written by the deceased. This statement can be termed as a hear say evidence, having no legal sanctity when the main witnesses were not asked about the authorship thereof. A mere suggestion put to Shyam Lal and Gulshan P Ws to the effect that Sarla had left a suicide note regarding her relations with some other person, takes us no where. The authorship of this letter could be proved either by producing some witness who had seen the deceased writing and signing or the said document could be sent to some handwriting expert alongwith the admitted writing of Sarla deceased for comparison. Both the situations are missing. Even the Investigating Officer does not say a word as to from whom he had verified about authorship of the said letter. In case this document is taken to be a proved one, this would amount to bye-passing the provisions of the Evidence Act. The Investigating Officer cannot be all and all. The irresistible conclusion, thus, is that the document Ex.P-2, the so-called suicide note has to be taken out of the zone of consideration. The defence of the Bansi Lal Appellant thus becomes very weak and fragile.

13. In view of the above, we do not see any cogent reason to take a view contrary to the view taken by the courts below that Ex.P2, the suicide note was not worth consideration. It has rightly been held by the courts below that it was to be ignored.

Ext.P.2, the so-called suicide note disclosing that Sarla (deceased) committed suicide as she developed love affair with Shiv Parkash has been referred to by the Investigating Officer Arjun Singh, ASI (PW.6) where in his cross-examination he has stated as under:

The diary, letter, and ball pen were lying in a window of the room. He had enquired about the author of the letter Ext.P.2 and it was revealed that it is written by Sarla,

deceased.

The witnesses of panchnama of recovery of this letter had not been examined though they had been Mahabir Singh, Chowkidar of village Shiwari and Hoshiar Singh, Ex. Sarpanch of Shiwari. Shyam Lal (PW.4) and Gulshan (PW.5) both have denied the suggestion of recovery of any such letter nor the letters had been shown to them for identifying the handwriting of Sarla (deceased). More so, there is nothing on record to show that she was educated. Arjun Singh, ASI (PW.6) has not stated anywhere that he knew the handwriting of Sarla (deceased) nor he has disclosed on whose information he had inferred that the letter had been written by Sarla (deceased). In such a fact situation, the recovery of such letter is to be disbelieved and the letter is required to be ignored totally. More so, it has no probative value because it is no body's case that the alleged suicide note is in the handwriting of Sarla (deceased).

14. The demand of scooter had been consistent and persistent as Shyam Lal (PW.4) and Gulshan (PW.5) had specifically deposed that the demand was only in respect of scooter and nothing else. Had this allegation be false, the said witnesses could also mention other articles purported to have been demanded by the Appellant or his other family members. Therefore, the veracity of the evidence of these two witnesses on this issue cannot be doubted. Both the witnesses had been subjected to long cross examination at the behest of the Appellant, however, nothing could be elicited from them to the extent that the allegations made by the prosecution could be false.

15. While considering the case u/s 498A, cruelty has to be proved during the close proximity of time of death and it should be continuous and such continuous harassment, physical or mental, by the accused should make life of the deceased miserable which may force her to commit suicide. In the instant case, the conduct of the accused forced the deceased Sarla to leave her matrimonial home just after one year of marriage and stay with her parents for 14 months continuously. It was only at the assurance given by the panchayat that the accused or his family members would not humiliate or subject the deceased Sarla with cruelty, that she rejoined her matrimonial home. It is specific evidence of Gulshan (PW.5) that just few days before her death, when he went to see her sister, there was a demand of scooter by the Appellant. In such a fact situation, we do not find any force in the submission made on behalf of the Appellant that there was no demand of scooter in the close proximity of the death.

16. In such a fact situation, the provisions of Section 113B of the Indian Evidence Act, 1872 providing for presumption that accused is responsible for dowry death, have to be pressed in service. The said provisions read as under:

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.

(emphasis supplied)

It may be mentioned herein that the legislature in its wisdom has used the word "shall" thus, making a mandatory application on the part of the court to presume that death had been committed by the person who had subjected her to cruelty or harassment in connection with or demand of dowry. It is unlike the provisions of Section 113A of the Evidence Act where a discretion has been conferred upon the court wherein it had been provided that court may presume to abatement of suicide by a married woman. Therefore, in view of the above, onus lies on the accused to rebut the presumption and in case of Section 113B relatable to Section 304 IPC, the onus to prove shifts exclusively and heavily on the accused.

17. The only requirement is that death of a woman has been caused by means other than any natural circumstances; that death has been caused or occurred within 7 years of her marriage; and such woman had been subjected to cruelty or harassment by her husband or any relative of her husband in connection with any demand of dowry.

18. Therefore, in case the essential ingredients of such death have been established by the prosecution, it is the duty of the court to raise a presumption that the accused has caused the dowry death. It may also be pertinent to mention herein that the expression shown before her death has not been defined in either of the statutes. Therefore, in each case, the court has to analyse the facts and circumstances leading to the death of the victim and decide if there is any proximate connection between the demand of dowry and act of cruelty or harassment and the death. vide: 302786 ; 260279 ; 265301 ; 275156 ; and 299592 .

19. In the instant case, evidently, the suicide note, Ext.P-2 purported to have been written by Sarla (deceased) had been taken by Appellant as his defence while making his statement u/s 313 Code of Criminal Procedure Therefore, the onus was on him to establish his defence by leading sufficient evidence to rebut the presumption that he has caused the dowry death. The Appellant miserably failed to discharge that onus.

20. In view of the above, the submissions advanced on behalf of the Appellant are rejected. The appeal does not have any special features warranting interference by this Court. The appeal lacks merit and stands dismissed.