PAWAN KUMAR

v.

STATE OF HARYANA

MARCH 13, 2001

[U.C. BANERJEE AND K.G. BALAKRISHNAN, JJ.]

Evidence Act, 1882 :

Suicide—By married woman—Abetment of—Presumption as to—Dowry torture—Held : In the circumstance of the case, accused committed cruelty towards his deceased-wife—Hence, High Court rightly presumed accused abetted suicide of his wife—Penal Code, 1860, Ss. 306, 498-A, 201 and 193.

Criminal Trial :

Circumstantial Evidence—Conviction based upon—Justification by—Held : Chain of events must be so complete as to leave no doubt that the act is done by the accused person—While it is true that there should be no missing links but every link need not appear on the surface of the evidence, since some links may only be inferred from proven fact—Strong suspicion is not sufficient to justify conviction—Where two views are possible the one in favour of the accused must be accepted.

The appellant-accused was convicted by the trial court for offences under Sections 306, 498-A, 201 and 193 of the Penal Code, 1860. The conviction was upheld by the High Court. Hence this appeal.

According to the prosecution, the appellant's wife was subjected to frequent dowry harassments as a result of which there was a strained relationship between them. On the fateful day, the appellant's wife was found lying burnt in her kitchen and the Assistant Sub-inspector of Police recorded her dying declaration in which she had stated that nobody was responsible for the fire which was accidental. However, the trial court and the High Court rejected the dying declaration and held the appellant guilty of abetment of suicide.

On behalf of the appellant it was contended that the dying declaration itself would negate any suicidal death but depicted a clear accidental incident resulting in the death of the deceased.

A Dismissing the appeal, the Court

HELD : 1.1. Success of the prosecution on the basis of circumstantial evidence will depend on the availability of a complete chain of events so as not to leave any doubt for the conclusion that the act must have been done by the accused person. While, however, it is true that there should be no B missing links, in the chain of events so as far as the prosecution is concerned, it is not that every one of the links must appear on the surface of the evidence, since some of these links may only be inferred from the proven facts. Circumstances of strong suspicion without, however, any conclusive evidence are not sufficient to justify the conviction and it is on C this score that great care must be taken in evaluating the circumstantial evidence. In any event, on the availability of two inferences, the one in favour of the accused must be accepted. [391-G-H]

State of U.P. v. *Ashok Kumar Srivastava,* AIR (1992) SC 840, referred to.

D

1.1. The evidence on record, ascribed to be circumstantial, ought to justify the inference of the guilt from the incriminating facts and circumstances, which are incompatible with the innocence of the accused or guilt of any other person. [392-F]

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Balwinder Singh v. *State of Punjab,* AIR (1987) SC 350, relied on.

2.1. The circumstances in the contextual facts and the materials on record substantiate the requirements of Section 113-A of the Evidence Act, 1882 and having regard to the language used in Section 498-A of the Penal F Code, 1860 it is clear that cruelty is written large as regards the conduct of the appellant towards his deceased-wife. [397-D]

2.2. The death of the deceased was caused by burn injuries only and having considered the nature of injuries and since one cannot but rule out an accidental death, the death of the deceased cannot but be attributed to G be suicidal on the basis of the circumstances as are available on record with the situation existing and having regard to statutory presumption, this Court cannot but lend concurrence to the opinion expressed by the High Court. The circumstances pointedly point out the accused as a guilty person as an abettor and on the wake of the aforesaid the order of convic- H tion cannot be interfered with. [397-H; 398-A-B]

Balwinder Singh **v.** *State of Punjab,* **AIR (1996) SC 607;** *Lakhjit Singh* **v.** *State of Punjab,* **[1994] Supp. 1 SCC 173;** *State of Punjab* **v.** *Gurdip Singh,* **[1996] 7 SCC 163 and** *Sharad Birdhichand Sarda* **v.** *State of Maharashtra,* **[1984] 4 SCC 116, held inapplicable.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1386 of 1999.

From the Judgment and Order dated 21.5.99 of the Punjab and Haryana High Court in Crl.A. No. 184-SB/87.

R.K. Jain, Sushil Kumar, Sanjeev Sachdeva and Sanjay Jain for the Appellant.

Ms. Monika Balhara, S.R. Sharma, V. Sudheer and Mahabir Singh for the Respondent.

The Judgment of the Court was delivered by

BANERJEE, J. The appellants, charged for the offences under Sections 306, 498A, 201 and 193 of the Indian Penal Code, were found guilty of offences by the Additional Sessions Judge, Kurukshetra under Sections 306 and 498(A) of the Code and were sentenced to undergo R.I. for six years. The High Court though dismissed the appeal qua appellant No.1, Pawan Kumar but as regards the appellant Nos. 2 and 3, sentences were reduced to six months under both counts respectively and it is this order of dismissal which is under challenge before this Court in the appeal by the grant of special leave.

Before adverting to the rival contentions, be it noted that the entire matter hinges on circumstantial evidence. There is also however existing on record, a dying declaration, but its effect on the matter, shall be discussed shortly hereafter in this judgment. Incidentally success of the prosecution on the basis of circumstantial evidence will however depend on the availability of a complete chain of events so as not to leave any doubt for the conclusion that the act must have been done by the accused person. While however, it is true that there should be no missing links, in the chain of events so far as the prosecution is concerned, but it is not that every one of the links must appear on the surface of the evidence, since some of these links may only be inferred from the proven facts. Circumstances of strong suspicion without however, any conclusive evidence are not sufficient to justify the conviction

A and it is on this score that great care must be taken in evaluating the circumstantial evidence. In any event, on the availability of two inferences, the one in favour of the accused must be accepted and the law is well settled on this score, as such we need not dilate much in that regard excepting however, noting the observations of this Court in the case of *State of U.P.* v. *Ashok Kumar Srivastava*, AIR (1992) SC 840 wherein this Court in
B paragraph 9 of the report observed:-

> "The Court has, time out of number, observed that while appreciating circumstantial evidence the Court must adopt a very cautious approach and should record a conviction only if all the links in the chain
C are complete pointing to the guilt of the accused and every hypothesis of innocence is capable of being negatived on evidence. Great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. The circumstance relied upon must be found to have been fully established and the cumulative
D effect of all the facts so established must be consistent only with the hypothesis of guilt. But this is not to say that the prosecution must meet any and every hypothesis put forward by the accused however, far-fetched and fanciful it might be. Nor does it mean that prosecution evidence must be rejected on the slightest doubt because the law
E permits rejection if the doubt is reasonable and not otherwise.

The other aspect of the issue is that the evidence on record, ascribed to be circumstantial, ought to justify the inferences of the guilt from the incriminating facts and circumstances which are incompatible with the innocence of the accused or guilt of any other person. The observations of this
F Court in the case of *Balwinder Singh* v. *State of Punjab*, AIR (1987) SC 350, lends concurrence to the above.

Referring to the prosecution case at this stage it appears that Ekta, the sister of Sudarshan Kumar was married to Pawan Kumar appellant No.1. After four months of the marriage, Ekta went to Sudarshan Kumar alongwith
G her husband Pawan Kumar and told him that a sum of Rs.10,000 was being demanded by Pawan Kumar, his father and mother. Sudarshan promised to pay that amount after a couple of days after arranging for it. Accordingly, three days thereafter Sudarshan accompanied by one Jag Pal Saini went to the house of the accused at Shahbad and paid the amount of Rs.10,000 to
H Smt. Kaushalya Devi. After about one year, Ekta again came to the house

of Sudarshan with a definite grievance about being pestered for money by her husband and parents-in-law. At that time, she stayed at the house of Sudarshan for eight months and never wanted to go back by reason of consistent harassment with beating. As a matter of fact, a feeling of being fed up together with despondency has completely over-powered her. Subsequently, a panchayat was held and at the asking of village Panchayat, Sudarshan agreed to send and did send Ekta with Ram Asra to the house of her parents-in-law at Shahbad. However, the appellants continued harassing Ekta for dowry. Sudarshan came to know of this fact whenever he visited Ekta at Shahbad and as and when she came to meet her parents at karera Khurd. It is further the case of the prosecution that about two months prior to the occurrence, Sudarshan booked a maruti van for himself and appellant-Pawan Kumar came to know about it. He went to the house of Sudarshan and told him that either the said van be given to him or he may book another van for him. Sudarshan however, refused to accede to the demand. Pawan Kumar went back leaving the impression that it would not bring good result. On 17.9.1985, Sudarshan received a telephonic message that Ekta was burnt. Sudarshan, accompanied by Dr. Krishan Lal, Sham Sunder and mother of Ekta went to Shahbad. On reaching Shahbad, they came to know that Ekta had been taken to P.G.I., Chandigarh by the accused. Sudarshan along with his companions reached P.G.I., Chandigarh and found that Ekta had died. He took the dead body and brought it to Shahbad and lodged a report to the police. The report was recorded by ASI Fateh Singh and he took up the investigation of the case. He reached at the spot. At that time, the kitchen of the house was locked and one ASI was put on guard. The dead body along with the inquest report was sent for post mortem examination. On the next day, the spot and the dead body were got inspected by the team summoned from Forensic Science Laboratory, Madhuban. Thereafter, the ASI inspected the spot himself and prepared a rough site plan. He took into possession certain articles, which were sealed. The statements of other witnesses were recorded. The appellants were arrested. On the completion of investigation, challan was filed. Thereafter the case was committed to the Court of Sessions where the learned Additional Sessions Judge tried it and the conviction as above was made by him.

Incidentally, the defence has also led evidence to show that Ekta died of an accident and not a suicidal death and on this score strong reliance was placed on the dying declaration by Ekta made before the Police Officer. Though, however, dying declaration is stated to be a got up document and

not worth even the paper on which it was written. The same is however, noted herein below :

"I was married with Pawan Kumar S/o Ram Asra caste Arora R/o Sainda Mohalla, Shahabad about 4-5 years before. My husband is cloths dealer and his shop is situated in Main Bazar Shahabad. We live together with our parents-in-law. Today in morning at about 8.30 AM my husband and my father-in-law Ram Asra had already been gone at shop and my mother-in-law Smt. Kaushalaya Devi also had gone to the house of neighbour for visit. I was alone at house. Today at about 10 AM I was boiling the Milk in Kitchen on a stove kerosene Oil was finished from the stove. It had taken a bottle of kerosene oil which was lying in kitchen for filling up in stove. Then that bottle of kerosene oil fell down from my hands and broken. The kerosene oil from the bottle fell upon my cloths and on the burns stove, so that reason my cloths get on fire on this I started crying on this a number of persons and women came to the spot. They put off the fire from my clothes and from body. Later on my husband reached there. I was brought in Civil Hospital Shahabad for treatment. This fire set on due to broken the bottle of kerosene. No body have fault in this matter. This fire was put on by chance and not I had put on fire by anybody. Statement heard and it is correct.

Attested

Sd/- Arun Kumar,ASI,
PS Shahabad
17.9.85

LTI,
Ekta Rani
W/o Pawan Kumar
"

Mr. Sushil Kumar, learned Senior Advocate contended that the sole issue in the matter under consideration is whether the death of Ekta can be ascribed to be an accidental death or a case of suicide? Needless to record that the High Court negated the case of accidental death and held the appellants guilty of abetment to the act of suicide and it is on this count that the appeal of the appellant No.1 before the High Court was rejected whereas the two other appellants had their sentences reduced.

In support of the appeal it has rather emphatically been contended that the dying declaration itself would negate any suicidal act, but depicted a clear accidental incident resulting in the death. It is this dying declaration which

the learned Trial Judge, as also the High Court ascribed it to be not worth the paper on which the same was written and does not deserve the credence of acceptance of the same. Peculiarities are the ways which can however, easily be noticed: The kerosene on the stove got finished as a result of which further filling of kerosene was required and hence a bottle was taken, which accidentally slipped out and broken. But the factum of the stove not having any kerosene, has been ignored, since absence of kerosene would put off the ignition and there would be total extinguishment of fire. The resultant effect of such an extinguishment mean and imply that one would require a match stick to ignite the kerosene- since there is no automatic flow of fire available. The fact, Ekta died of burn injuries stands admitted which has been stated to be accidental and not suicidal. It is on this score however, the prosecution laid evidence to depict that the accident could not have happened as stated in the dying declaration and it has been an evidence created to cover up the suicide. Strong reliance has been placed on the evidence of Senior Scientific Officer Shri J.L. Gaur (PW.2) who in no uncertain terms ruled out any accidental burn injury in the matter. On an examination of the body it was observed that a part of the scalp, hair on the top of head eye brow, eye lashes and pubic hair were burnt and singed. However, hairs on the sides and back of the head had escaped any injury. The body was burnt practically all over excepting the feet and their soles. Three kerosene stoves were available in the kitchen, two being with sufficient fuel for use and the other one lying totally idle in another corner of the room with accumulation of dust on them. In any event, the third stove lying in the other corner was not having even a smell of kerosene. Pieces of broken glass bottle with no smell of kerosene were available in the kitchen and one of the bottom piece of bottle had fungus like deposit clearly indicating non user of the bottle as a container of kerosene for quite sometime. Significantly, there was a match box, a broken match box lying on the floor at a distance of about four feet from the stove. The used sticks of match box were available near the stove. The match box emitted smell of kerosene. PW.2 has also spoken of non-availability of any milk or milk container even in the kitchen. The further finding of PW.2 is that both the stoves were in working condition and the air pressure valves of the stove were found in open position having the lids of the tanks of the stove dry and tightly closed. PW 2 further spoke of an unused funnel lying on the floor of the room which also did not have any kerosene smell.

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It is for reasons as above that learned Sessions Judge and the High Court refused to put any credence on the defence of accidental burn injury. H

A If the accidental injury is ruled out and which we also feel the same way as that of the other two Courts, the obvious conclusion would be suicidal death and on that issue a further question arises as regards abetment. An analysis of the evidence of PW.3, Sudarshan Kumar (brother of the deceased) depicts the behavioural pattern received at the in-laws place by Ekta. Occasional demand for money and failure to meet the same, however, resulted in beating up of the girl, Ekta, and as a matter of fact in September 1985 she came back to the house of complainant all alone and this arrival, the complainant described as the aftermath of torture which in fact did put her up in a bad shape. Definite evidence is available on record that Ekta stayed with the complainant for about 8 months and it is only thereafter the appellant No.2 wanted to take back Ekta. The brother of complainant PW.3 however, pointedly refused though after some persuasion and assurance of the father-in-law, in the presence of some other members of the family, of proper treatment to the daughter-in-law, the complainant agreed and Ekta thus went back to the in-laws place. Further evidence, however, records that there has been no improvement of the behavioural pattern and she was subjected to dowry torture as also various abusive treatment by reason of not being able to bear a child. Incidentally, the two families, namely the bride's and groom's, related to each other and it is on this score that learned Senior Advocate in support of the appeal contended that dowry torture or even user of any abusive language were all figments of imagination : The evidence however, tell a different story - The torture continued and reached its peak in July 1985 by reason of a booking of a Maruti Van by the complainant which was asked to be delivered to the accused/appellant, on refusal, however, to comply with the demand for delivery of the van by the complainant, the relationship was further estranged and PW 3 was given a warning as regards the events to follow and it is only thereafter this incident of burn injury took place. A number of relatives were also examined and their evidence corroborate this state of affairs as narrated by the complainant PW.3.

The learned Senior Advocate in support of the appeal further contended that the factum of the hospitalization of Ekta in any event negates any ill treatment or torture, but to be treated as a positive evidence of goodwill and affection. We are, however, unable to record our concurrence therewith having due regard to the evidence and other materials available on record. There is thus preponderance of evidence of dowry torture and it is on this count that Section 113(A) of the Evidence Act ought to be taken note of. Section 113(A) reads as below:-

A *"113(A). 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 B 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.

Explanation:- For the purposes of this Section, "cruelty" shall have the same meaning as in Section 498-A of the Indian Penal Code C (45-1860)."

Incorporation of Section 113(A) of the Evidence Act in the statute book, depicts a legal presumption though however, the time period of within seven years of marriage is the pre-requisite for such a presumption. The circumstances as noticed hereinbefore in the contextual facts and the materials D on record substantiate the requirements of Section 113 (A) and having regard to the language used in Section 498 A of the Indian Penal Code there cannot be any hesitation in coming to a finding that cruelty is written large as regards the conduct of the appellant herein towards Ekta. Needless to state that Section 113(A) itself by way of an explanation provides that 'cruelty' shall E have the same meaning as is attributed under Section 498(A) of the Indian Penal Code which reads as below:-

"(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 F

(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."

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On the wake of the aforesaid and by reason of the fact and the death of Ekta was caused by burn injuries only and having considered the nature of injuries and since one can not but rule out an accidental death as discussed hereinbefore, the death of Ekta cannot but be attributed to be suicidal on the basis of the circumstances as is available on record with the situation existing and having regard to statutory presumption, this Court can not but lend H

A concurrence to the opinion expressed by the High Court. The decisions of this Court as relied upon by Mr. Sushil Kumar (viz. : *Balvinder Singh* v. *State of Punjab*, AIR (1996) SC 607: *Lakhjit Singh & Anr.* v. *State of Punjab*, [1994] Supp 1 SCC 173: *State of Punjab* v. *Gurdip Singh & Ors.*, [1996] 7 SCC 163 *Sharad Birdhichand Sarda* v. *State of Maharashtra*, [1984] 4 SCC
B 116, do not however, advance the matter any further since each case shall have to be dealt in the light of its own factual sphere and judicial precedents do not render any assistance whatsoever by reason of the peculiar factual matrix. In the facts of the matter under consideration, the circumstances pointedly point out the accused as a guilty person as abettors and on the wake of the aforesaid the order of conviction cannot be interfered with. The High
C Court has been lenient enough in dealing with the appellant Nos.2 and 3 by reducing the sentence, but since there is no cross appeal, we do not wish to record any contra view as regards the sentence as well.

In that view of the matter, this appeal fails and thus stands dismissed.

D V.S.S. Appeal dismissed.