

A

SATBIR SINGH AND ORS.

v.

STATE OF HARYANA

SEPTEMBER 14, 2005

B

[H.K. SEMA AND G.P. MATHUR, JJ.]

C

*Penal Code, 1860—Sections 304-B, 498-A and 201—Dowry death—Harassment for dowry by in-laws of the deceased on various occasions—Deceased sent to her father's home to arrange dowry about 10 days before the occurrence—Deceased returned to her matrimonial home on request of the accused persons—Deceased found dead under suspicious circumstances and cremated hurriedly—High Court upheld conviction by trial court—On appeal Held, death undisputedly occurred during 7 years of marriage and prosecution established ingredients of the offences—Once the prosecution*

D

*has established ingredients of Section 304-B IPC, the onus lies on the accused to rebut the presumption under Section 113-B of the Evidence Act—Evidence of defence witness did not inspire confidence—Acts of harassment were never condoned when the deceased returned to her matrimonial home—Evidence Act, 1872—Section 113-B.*

E

*Juvenile Justice Act, 1986—Section 2(h)—Juvenile Justice (Care and Protection) Act, 2000—Section 20—Held, provisions are applicable even to cases initiated and pending provided the offender has not completed 18 years of age as on 1.4.2001.*

F

**The appellants, the in-laws of the deceased, were convicted under Sections 304-B, 498-A and 201 of the Indian Penal Code. The deceased was being harassed for dowry, before her death. A-1 and A-4 were her father-in-law and mother in law. A-2 was her brother-in-law and A-3, her husband. As per the prosecution, the accused persons sent the deceased to her father's home about 10 days before the occurrence to arrange dowry of Rs. 7000 for the purchase of a buffalo. Later, on 11.6.1989 A-3 came to the house of PW-4, her father, and requested him to send the deceased to her matrimonial home for attending the engagement ceremony of A-2, for which he agreed. On the intervening night of 13.4.1989 and 14.6.1989, A-2 and four others informed PW-4 that the deceased was seriously ill.**

G

H

When he reached there he found her dead with blood in her mouth. The accused persons refused to hand over the dead body to PW-4 and hurriedly cremated her body, the next morning. The High Court affirmed the order of conviction passed by the trial court. Hence this appeal.

Appellants contended that the evidence of DW-1, the compounder of the village doctor, was material for rebuttal of the presumption under Section 113-B of the Indian Evidence Act; that the deceased condoned all acts of harassment, when she returned to her matrimonial home on 11.6.1989; and that A-2 was entitled to the benefit of the Juvenile Justice Act, 1986 and Juvenile Justice (Care and Protection) Act, 2000.

Dismissing the appeal, the Court

HELD: 1. Undisputedly the death of the deceased occurred during seven years of her marriage. At the time of marriage the dowry was paid according to the capacity of the complainant. However, subsequent to the marriage, the deceased was harassed for not bringing more dowry. Ten days prior to the incident, the deceased had come to the complainant's place and stated that her in-laws were demanding Rs. 7,000 as they wanted to purchase a buffalo. She had further stated that till she brought the same, she would not be allowed to return. She died in intervening period of 13/14.6.1989 with bodily injury occurring otherwise than under normal circumstances. The prosecution was able to establish the ingredients as enjoined under Section 304-B of Indian Penal Code. Once the same was established the presumption against the accused began as enjoined under Section 113-B of the Indian Evidence Act. Though a rebuttable presumption, the onus lies on the accused against whom the presumption lies to discharge it. Once the prosecution has established ingredients of Section 304-B IPC, the onus lies on the accused to rebut the presumption under Section 113-B of the Evidence Act. [187-B-C-D-E-F]

*State of Karnataka v. M.V. Manjunathgowda and Anr.*, [2003] 2 SCC 188, relied on

2.1. The evidence of DW-1 was considered by the trial court as well as by the High Court and rejected, as it did not inspire confidence. The case of the appellant was that the deceased died of heart attack and in his defence he examined DW-1. *Prima facie*, the evidence did not inspire confidence. DW-1 in his own statement stated that he was a matriculate and working as a compounder with the village Doctor, who did not possess

A MBBS degree. DW-1 referred to a Certificate stated to have been granted by a village Doctor to the effect that he had worked as Compounder, but he had no knowledge about the symptoms of heart attack. The deposition of DW-1 was that the deceased was suffering from heart ailment, was only a figment of his imagination. With his educational background no credibility could be given to such a statement. The accused had not brought out any evidence that the deceased was suffering from heart ailment. The plea that the deceased died of heart attack was merely a ruse to escape punishment. PW-4 categorically stated, in his cross examination that the deceased did not die of heart attack but she was killed because he saw bluish signs on her neck. [188-B-C-D-E-F]

C 2.2. It came in evidence that the deceased was taken back by A-3 on 11.6.1989 stating that the engagement ceremony of his younger brother was to be performed on 12.6.1989 and in which the presence of deceased was required. There was no evidence whatsoever to show that the engagement of A.2 was performed on 12.6.1989. Taking the deceased back on 11.6.1989 under the pretext of impending engagement ceremony on 12.6.1989 is merely a ruse. [188-F-G-H]

*State of Orissa v. Niranjana Mohapatra and Ors.*, JT (2005) 2 SC 599 and *Kans Raj v. State of Punjab and Ors.*, JT (2000) 5 SC 223, distinguished

E 3. Juvenile means a boy who has not attained the age of 16 years or a girl who has not attained the age of 18 years. As per the statement A-2 he was 17 years of age, as on 13.6.1989, therefore, not entitled to the benefit of Juvenile Justice Act, 1986. The provisions of the Juvenile Justice (Care & Protection) Act, 2000 are applicable even to those cases initiated and pending for offences committed under the Juvenile Justice Act, 1986, provided the offender has not completed 18 years of age as on 1.4.2001. [189-C-D-E-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 7 of 2005.

G From the Judgment and Order dated 8.8.2003 of the Punjab and Haryana High Court in Crl. A. No. 151 SB of 1990.

R.N. Kush, Jetender Singh, Ms. Deep Shikha and S.K. Sabharwal for the Appellants.

Manjit Singh, Harikishan Kataria and T.V. George for the Respondent.

H The Judgment of the Court was delivered by

SEMA, J. Heard parties.

This appeal is directed against the judgment and order dated 8.8.03 passed by the High Court affirming the conviction recorded by the Trial Court.

Accused No.1 Satbir Singh, father-in-law of the deceased, Accused No.2, Pritam Singh, younger brother of the deceased, Accused No.3, Dilbag Singh, husband of the deceased and Accused No. 4, Smt. Bohti, mother-in-law of the deceased were put to trial under Sections 304-B, 498-A and 201 IPC. The Trial Court, after considering the evidence and the documents on record, convicted all of them and sentenced them to undergo rigorous imprisonment for 7 years under Section 304-B IPC. They were also sentenced to 3 years RI and fine of Rs. 1000, in default to undergo 1 year RI under Section 498-A IPC. Accused Nos. 2 and 3 were also sentenced to undergo 3 years RI and fine of Rs. 1000, in default to undergo RI for one year under Section 201 IPC. The sentence were, however, ordered to run concurrently.

Briefly stated the prosecution case is that the FIR was lodged by complainant, PW-4, father of the deceased on 14.6.1989 to the effect that he had five daughters and two sons. Smt. Shanti Devi was married to Accused No.3, Dilbag Singh, and at the time of marriage he had given dowry as per his capacity. Subsequently when the deceased used to come from her maternal house, she was asked to make some demand of dowry on the instructions of the family members of her in-laws. It is also stated that after the marriage also, the complainant had given a radio and wrist watch, but not satisfied, accused No.3 and his family members used to demand more dowry. It is also stated that about 10 days back from the date of occurrence that is, intervening night of 13/14th June, 1989, the deceased Smt. Shanti had come to the house of the complainant and stated that Accused No.3 Dilbag Singh, Accused No.2, Pritam Singh, Accused No.1, Satbir Singh and Accused No.4 Smt. Bohti, the mother-in-law of the deceased, asked her to go to the complainant's house and bring a sum of Rs. 7000, because they wanted to purchase a buffalo. It is also stated that the deceased would not be allowed to reside in in-laws house till she brought Rs. 7000 with her. It is stated that the complainant, being a poor man, could not meet the said demand. On 11.6.1989, A.3, Dilbag Singh came to the house of the complainant and requested him to send the deceased Smt. Shanti with him stating that there was an engagement ceremony of his younger brother, Pritam Singh on 12.6.1989 and the presence of the deceased will be required. Considering the request, the deceased was sent along with A.3 on 12.6.1989. It is further stated that in the intervening

A night of 13/14.6.1989 at about 1.30 a.m. A.2 and four others came to the village of the complainant and told him that his daughter was seriously ill. On arrival the complainant noticed that Shanti was already dead and there was blood in her mouth. He requested the accused that he will take the body of his daughter to his village and perform last rites. However, the request was declined and the accused hurriedly called about 15/20 persons from the village and against his wishes the body of the deceased was cremated at about 8.00 a.m.

Section 304-B reads as under:-

C 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."

Section 304-B as quoted above, clearly shows that in order to bring the offence within the purview of Section 304-B, the following ingredients are to be fulfilled:-

- E (a) that the death of woman is caused by any burns or bodily injury occurs other than in normal circumstances,
- (b) that such death must have occurred during the seven years of her marriage,
- F (c) Soon before her death, she must be subjected to cruelty or harassment by her husband or any relative of her husband,
- (d) Such harassment by the husband or relative must be in connection with any demand for dowry.
- G (e) Once the ingredients are fulfilled the death shall be presumed as dowry death. The husband and such other relatives shall be deemed to have caused her death.

Section 304-B was inserted in the Indian Penal Code by Act 43 of 1986 with effect from 19.11.1986. In consequence thereof, another Section 113-B was inserted in the Evidence Act by Act 43 of 1986 with effect from 1.5.1986.

Section 113-B of the Evidence Act deals with the presumption of the dowry death which reads as under:- A

“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, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.” B

Undisputedly in this case the death of a woman has occurred during seven years of her marriage. It is also stated that, at the time of marriage the dowry has been paid according to the capacity of the complainant. However, subsequent to the marriage, the deceased Shanti was harassed for not bringing more dowry. Ten days prior to the incident, the deceased had come to the complainant's place and stated that her in-laws were demanding Rs. 7000 as they wanted to purchase a buffalo. She had further stated that till she brings the desired money, she would not be allowed to reside in her in-laws place. She died in intervening period of 13/14/6/1989 with bodily injury occurs otherwise than under normal circumstances. In our view, the prosecution has been able to establish the ingredients as enjoined under Section 304-B of Indian Penal Code. Once the prosecution is able to establish the aforesaid ingredients, the presumption against the accused starts as enjoined under Section 113-B of the Indian Evidence Act. Of course, it is a rebuttable presumption and the onus lies, on the accused against whom the presumption lies to discharge it. On this aspect the laws are no more *res integra*. In catena of decisions, this Court has repeatedly held that once that ingredients of Section 304-B IPC have been able to established by the prosecution, the onus lies on the accused to rebut the presumption under Section 113-B of the Evidence Act. Avoiding multiplicity, we may refer to the decision rendered by this Court in the case of *State of Karnataka v. M.V. Manjunathgowda and Anr.*, [2003] 2 SCC 188 at page 189 this Court said that C D E F

“In order to establish the offence under Section 304-B IPC the prosecution is obliged to prove that the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances and such death occurs within 7 years of her marriage and if it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband. Such harassment and cruelty must be in connection with any demand for dowry. If the prosecution is able to prove these circumstances G H

- A then the presumption under Section 113-B of the Evidence Act will operate. It is a rebuttable presumption and the onus to rebut shifts on the accused. The defence of the accused was a total denial. Therefore, the presumption as to dowry death envisaged under Section 113-B of the Evidence Act remains un rebutted.”
- B Learned counsel for the appellant, in order to rebut the presumption, has taken us through the evidence of DW-1. His evidence was considered by the Trial Court as well as by the High Court, and rejected as it does not inspire confidence. The case of the appellant was that the deceased died of heart attack and in his defence he examined DW-1. We have also been taken through the entire evidence of DW-1. *Prima facie*, the evidence does not inspire confidence. DW-1 in his own statement, said that he was a matriculate. He was stated to be working as a Compounder with the village Doctor. The village Doctor does not possess MBBS degree. DW-1 referred to a Certificate stated to have been granted by a village Doctor to the effect that he had worked as Compounder, but he has no knowledge about the symptoms of heart attack. The deposition of DW-1 is the deceased Shanti was suffering from heart ailment, is only a figment of his imagination. With his educational background, as aforesaid, no court shall give credence to such statement, as has been rightly done by the Trial Court and the High Court in the instant case. This apart, the accused has not brought out any evidence that the deceased was suffering from heart ailment. Therefore, the plea that the deceased died of heart attack was merely a ruse to escape punishment. PW-4 categorically stated, in his cross examination, that the deceased, Smt. Shanti, did not die of heart attack but she was killed because he saw bluish signs on her neck. Learned counsel for the appellant also strenuously urged that the harassment, if any, meted out to the deceased was subsequently condoned by the act of the accused by taking the deceased back to his house on 11.6.1989. It has come in evidence that the deceased was taken back by A.3 on 11.6.1989 stating that the engagement ceremony of his younger brother who has been arraigned as A.2 in this appeal was to be performed on 12.6.1989 and on which the presence of deceased was required. There is no evidence whatsoever to show that the engagement of A.2 was performed on 12.6.1989 as stated. Therefore, taking the deceased back on 11.6.1989 under the pretext of impending engagement ceremony on 12.6.1989 is merely a ruse. Learned counsel has referred to the decision of this Court rendered in the case of *State of Orissa v. Niranjan Mohapatra and Ors.*, reported in JT (2005) 2 SC 599 wherein this Court has held, that there was no evidence to suggest that soon before the occurrence, the deceased was subjected to torture and harassment

and therefore the ingredients under Section 304-B was not established. Apart from, no law has been laid down in the said decision which can be followed as a precedent, the facts of that case are distinguishable with the facts of the present case. In the present case, we have already noted that the ingredients of Section 304-B have been well established by the prosecution.

Learned counsel also has referred to another decision of this Court rendered in *Kans Raj v. State of Punjab and Ors.*, reported in JT (2000) 5 SC 223 wherein this Court held that subsequent allegation must be levelled against all the accused which may be mentioned in the complaint PW-4 has mentioned all the names of the accused in the F.I.R. This ruling is of no help to the appellant.

Lastly, it is contended that the A.2, Pritam Singh was 17 years of age as on 13.6.1989 and therefore he should be entitled to the benefit of the Juvenile Justice Act, 1986. Section 2(h) defines "Juvenile" means a boy who has not attained the age of 16 years or a girl who has not attained the age of 18 years. As per his own statement A.2 was 17 years of age as on 13.6.1989, therefore, he is not entitled to the benefit of Juvenile Justice Act, 1986.

Counsel also made an attempt to press the services of Section 20 of the Juvenile Justice (Care and Protection) Act, 2000 (56 of 2000). The Act was enforced with effect from 1.4.2001. In the case of *Pratap Singh v. State of Jharkhand and Anr.*, reported in JT (2005) 2 SC 271, the Constitution Bench of this Court considered the question and held, that the provisions of the 2000 Act would be applicable even to those cases initiated and pending for offences committed under the Act of 1986, provided the offender has not completed 18 years of age as on 1.4.2001.

For the reasons aforesaid, the appeal is devoid of any merit and it is, accordingly, dismissed.

Accused Nos.1, 2 and 4 are on bail. Their bail bonds stands cancelled. They are directed to be taken in custody forthwith to serve out the remaining part of the sentences. Compliance report be sent to this Court within one month.

A.Q.

Appeal dismissed.