

GURDEEP SINGH

v.

STATE OF PUNJAB AND ORS.
(Criminal Appeal No. 1085 of 2003)

AUGUST 25, 2011

[HARJIT SINGH BEDI AND GYAN SUDHA MISRA, JJ.]

Penal Code, 1860: ss.304B, 498A – Allegation of dowry death against appellant-husband, his brothers, parents and sisters – Allegation that all the accused administered poison to the victim-deceased which resulted in her death – Trial court held the appellant and his parents guilty, however, acquitted his brothers and sisters – High Court upheld the conviction of appellant and ordered acquittal of his parents – On appeal, held: The evidence with respect to the appellant was almost identical with that of the six accused who were acquitted of the same charge – Allegation of poisoning was not substantiated as no poisonous substance was found in the report of FSL – Mere fact that the victim was a young woman would not lead to inference that she had died an unnatural death – Likewise, the evidence of demand for dowry or goods soon before death was also lacking – Indisputably, in order to attract s.304B, it is imperative on the part of the prosecution to establish that the cruelty or harassment has been meted out to the deceased ‘soon before her death’– It must undergo the test known as ‘proximity test’— Evidence clearly failed the proximity test – Courts below drew a presumption against the accused primarily on the plea that they had not informed the parents of the deceased that she had died and had hurriedly cremated her dead body – Evidence of the brother and the father of the victim in the Court was that they had received no information about the death – However, in their statements recorded u/s.161, Cr.P.C. they had stated that they were present when the cremation took place – In order to explain this contradiction both these witnesses disowned their s.161

A *statements and testified that they had not made any statement to the police – These statements were, however, falsified by the evidence of the police officer concerned, who deposed that the police statements were recorded by him as per the dictates of the two witnesses – Conviction liable to be set aside – Appellant acquitted – Evidence Act, 1872 – s.113B.*

Suresh Kumar Singh v. State of Uttar Pradesh (2009) 17 SCC 243: 2009 (7) SCR 1068 – relied on.

C **Case Law Reference:**

2009 (7) SCR 1068 relied on Para 5

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1085 of 2003.

D From the Judgment and Order dated 21.05.2002 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 667-SB of 2000.

E Sudhir Walia and Abhishek Atrey for the Appellant.

Kuldip Singh, R.K. Pandey, H.S. Sandhu, K.K. Pandey and Mohit Mudgal for the Respondents.

The following order of the Court was delivered

F **O R D E R**

1. This appeal arises out of the following facts:

G 1.1 The appellant Gurdeep Singh was the husband of the deceased Rajender Kaur. The couple had got married on the 14th of October, 1989 and it is the case of the prosecution that a substantial amount of money far beyond the means of the bride's family had been spent at that time though the appellant, his parents, sisters and other relatives remained dissatisfied. H It appears that the demands for dowry continued unabated and

about one year before the death the appellant demanded a sum of `25,000/- for the purchase of a motorcycle, and this amount was indeed handed over to the appellant but was utilised for purchasing a plot instead. It is further the prosecution story that despite having received the aforesaid amount, the deceased continued to suffer at the hands of her husband and his relatives and that despite the efforts of a panchayat in the matter no suitable result followed. It is further the prosecution story that the appellant and his relatives administered poison to Rajinder Kaur on the 27th July, 1995 which caused her death and that three days thereafter information was received by Gurdev Singh P.W. 2, her brother, and Satnam Singh, P.W. 3 her father on which they alongwith others rushed to the matrimonial home of Rajinder Kaur but found that the dead body had been hurriedly cremated. Gurdev Singh P.W.2 thereupon gave an application Exhibit PB to the Station House Officer, Police Station, Gidderbaha and on its basis a daily diary entry was recorded and after a preliminary probe, a First Information Report for offences punishable under Section 304B and 498A IPC was registered on the 8th August, 1995. After investigation, Gurdeep Singh, the appellant herein, his brothers, Harbhajan Singh and Daljit Singh, parents, Jit Singh and Satnam Kaur, and sisters Darshan Kaur and Daljit Kaur were brought to trial for the aforesaid offences. The trial court vide its judgment dated 15th July, 2000, found the charge under Section 304B proved against the appellant, Jit Singh and Satnam Kaur and the three were, accordingly, sentenced to undergo rigorous imprisonment for ten years. The trial court, however, gave the benefit of doubt to Harbhajan Singh, Daljit Singh, Darshan Kaur and Daljit Kaur and acquitted them of the charge. The matter was thereafter taken in appeal by the convicted accused, and the High Court, has, by the impugned judgment dismissed the appeal of Gurdeep Singh and allowed the appeal of Jit Singh and Satnam Kaur. The solitary appellant now before us is Gurdeep Singh.

2. Mr. Sudhir Walia, the learned counsel for the appellant has raised several arguments before us during the course of

A the hearing. He has first pointed out that the presumption under
Section 113B of the Indian Evidence Act could be drawn with
B respect to a dowry death only if the ingredients of Section 304B
of the Indian Penal Code were spelt out and in the light of the
uncertain evidence that had come on record, more particularly,
C as there was no evidence of an unnatural death or demands
being made for dowry or other articles soon before the death,
the said provision was inapplicable. It has also been pointed
out that the prosecution story that `25,000/- had been spent to
buy a plot was on the face of it wrong in the light of the
D documentary evidence proved by D.W. 2 Ram Chand, an
employee of the bank who deposed to the effect that a sum of
`93,000/- had been withdrawn from the bank on the 27th of July,
1994, and the statement of DW 4- Pushpinder Singh, Junior
Assistant, Tehsil Office, Gidderbaha from the Sub-Registrar's
E office who deposed that a sale deed for a plot priced at `54,000/
- had been executed and as such the facts indicated that the
entire amount for the sale had come from the account of
Gurdeep Singh the appellatant herein. He has, accordingly,
F pointed out that there was no evidence with respect to any
demand being made soon before the death. The learned
counsel has also placed reliance on a judgment of this Court
in *Suresh Kumar Singh v. State of Uttar Pradesh* (2009) 17
SCC 243. He has, in addition, argued that the prosecution story
that P.W. 2, P.W. 3 and other relatives had not been called to
attend the cremation was in clear contradiction vis-á-vis their
G statements recorded under Section 161 Cr.P.C. and the
evidence in Court and that this contradiction had been pointed
out during the course of the cross examination. In the alternative,
it has been submitted that assuming for a moment that no
statements of P.Ws. 2 and 3 under Section 161 Cr.P.C. had
H been recorded, as deposed by them in their evidence, the
prosecution would still not gain any advantage as a statement
recorded in Court for the first time would have very limited
evidentiary value.

H 3. Mr. Kuldip Singh, learned counsel for the State has,

however, supported the judgment of the trial court and the High Court and has submitted that as the deceased was a young woman, a presumption had to be drawn that she had died an unnatural death and as such the provisions of Section 113B of the Evidence Act would be applicable to the facts of the case.

4. We have heard the learned counsel very carefully and have gone through the record.

5. We first find that the evidence with respect to the appellant Gurdeep Singh is almost identical with that of the six accused who have been acquitted of the same charge – two by the High Court and four by the trial court and he appears to have been singled out as being the husband. We first take up the argument relating to Section 304B and the presumption drawn under Section 113B: A bare reading of Section 304B pre-supposes several factors for its applicability, they being:- (i) death should be of burns or bodily injury or has occurred otherwise than under normal circumstances; (ii) within seven years of the marriage; and (iii) that soon before her death she had been subjected to cruelty or harrassment by her husband or her relatives. This Court in *Suresh Kumar Singh's* case supra has held that even if one of the ingredients is not made out, the presumption under Section 113B of the Evidence Act would not be available to the prosecution and the onus would not shift to the defence.

6. We find in the present case that there is no evidence of unnatural death. It is the prosecution story that the deceased had been poisoned. It has, however, come in the evidence, and in particular, in the report of the Forensic Science Laboratory dated 21st August, 1995, that on an analysis of the bones and ashes no poisonous substance had been found to be present. In this view of the matter, the mere fact that the deceased happened to be a young woman would not lead to the inference that she had died an unnatural death. Likewise, we find that the evidence of demand for dowry or goods soon before death is also lacking. Admittedly, the only evidence of any demand was

A of Rs. 25,000/- made one year prior to the incident and as per the defence evidence of D.W. 2 and D.W. 4, the money for the execution of the sale deed had been taken out from the bank a day earlier. In the light of these two factors it has been held in paragraph 25 of the above cited case as under:

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Indisputably, in order to attract Section 304B, it is imperative on the part of the prosecution to establish that the cruelty or harassment has been meted out to the deceased 'soon before her death'. There cannot be any doubt or dispute that it is a flexible term. Its application would depend upon the factual matrix obtaining in a particular case. No fixed period can be indicated therefor. It, however, must undergo the test known as 'proximity test'. What, however, is necessary for the prosecution is to bring on record that the dowry demand was not too late and not too stale before the death of the victim."

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7. We, therefore, find that evidence clearly fails the proximity test as laid down in the aforesaid judgment.

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8. The courts below have, however, drawn a presumption against the accused primarily on the plea that they had not informed the parents of the deceased that she had died and had hurriedly cremated her dead body. We further see from the evidence of P.Ws. 2 and 3 that in their statements recorded in Court they did say that they had received no information about the death on which they had been confronted with their statements recorded under Section 161 of the Cr.P.C. in which they had stated that they had indeed been present when the cremation had taken place. In order to explain this contradiction both these witnesses disowned their 161 statements and testified that they had not made any statement to the police. These statements are, however, falsified by the evidence of P.W. 4 ASI Gurmel Singh, the police officer concerned, who deposed that the police statements had been recorded by him as per the dictates of the two witnesses. In the alternative, even

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assuming that no statements of P.Ws. 2 and 3 had been

recorded under Section 161 Cr.P.C. this factor destroys the substratum of the prosecution story in a far greater measure as it must then be taken that their statements were being recorded for the first time in Court which would rob them of much of their evidentiary value. In this case, we find that the two witnesses are none other than the brother and the father of the deceased.

9. We are, therefore, of the opinion that as a result of the cumulative discussion above, the appellant has to succeed. We, accordingly, allow this appeal, set aside the judgments of the courts below insofar as he is concerned and order his acquittal. Bail bonds stand discharged.

D.G.

Appeal allowed.