

[2013] 12 S.C.R. 339

SUKHWINDER SINGH

v.

STATE OF PUNJAB

(Criminal Appeal No. 1023 of 2008)

NOVEMBER 12, 2013

[**RANJANA PRAKASH DESAI AND
MADAN B. LOKUR, JJ.**]

PENAL CODE, 1860:

s.304-B - Dowry death - Conviction of husband by High Court - Held: The evidence on record discloses that after marriage, attitude of accused was hostile towards deceased - Five days prior to incident deceased had described to her father about the demands raised by accused and that there was danger to her life - Thus, harassment of dowry was soon before the death - Further, victim died of poisoning within 7 years of marriage - Therefore, presumptions u/s 304-B IPC and s.113-B of Evidence Act are attracted - Conviction upheld - Evidence Act, 1872 - s.113-B.

INVESTIGATION:

Discrepancies in timing and date of handing over of case property - Overwriting in inquest report - Held: Cases in which substratum of prosecution case is strong and substantiated by reliable evidence, lapses in investigation should not persuade the court to reject the prosecution case and unnecessary weightage should not be given to minor errors or lapses - In the instant case, the doctor clearly deposed about the date of handing over the case property to police after post-mortem - There seems to be mistake in giving dates -- Similarly, the overwriting in the inquest report is inconsequential -- It could be a mere inadvertent lapse - Further, sending the special report to magistrate the following

A *day has no adverse impact on prosecution case - Code of Criminal Procedure, 1973 - s.57.*

B The daughter of PW 2 was married to the appellant in May, 1989. On 30.6.1991, she died in the matrimonial home. The prosecution case, as revealed from the statement of PW 2, was that on 25-6-1991 when he went, along with PW-3, to the house of the appellant to meet her daughter, she was in tears and told that the appellant and the other accused were demanding a scooter and a refrigerator and that her life was in danger. On 1.7.1991, he was informed that his daughter had died on 30/06/1991. A case for offence punishable u/s 304B IPC was registered against the appellant (accused no. 4), his father, mother and brother (accused nos. 1 to 3 respectively). The trial court acquitted all the accused. D The High Court convicted the appellant u/s 304B, IPC and sentenced him to 7 years RI.

Dismissing the appeal, the Court

E HELD: 1.1 Admittedly, the deceased died within seven years of marriage, therefore, presumptions u/s 304-B, IPC and s.113B of the Evidence Act are attracted to the case. It is for the appellant to rebut it, which, the he has failed to do. [para 8] [345-H; 346-A]

F 1.2 It is not correct to say that from the date of marriage till the date of incident there was no harassment to the deceased. PW-2 has given the details of articles given to the appellant and his family as dowry and stated that after marriage the attitude of the accused was hostile towards the deceased. Besides, the demand was made on 25.06.1991 and the deceased died on 30.06.1991. Thus, the harassment for dowry was soon before the death of the deceased, as required by s. 304-B, IPC and s.113-B of the Evidence Act. Further, from the medical

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evidence it is clear that the victim died of poisoning. [para 9-10] [346-G; 347-A-B, D] A

1.3 As regards overwriting and discrepancies in timing and date of handing over the case property to police after post-mortem, PW-1, the doctor who did the post-mortem of the deceased, stated that post-mortem was conducted on 01/07/1991. There is no reason to disbelieve him. He stated that he handed over the case property to PW-7 on 1.7.1991. However, PW-7, in his affidavit has stated that post-mortem was conducted on 2.7.1991 and he handed over the case property to PW-4 on 2.7.1991. The evidence does not indicate any tampering with the case property. There appears to be mistake in giving the dates. Similarly, the overwriting in the inquest report is inconsequential. It could be a mere inadvertent lapse. [para 11] [347-D-E, H; 348-A, E] B C D

1.4 Where substratum of the prosecution case is strong and substantiated by reliable evidence, lapses in investigation should not persuade the court to reject the prosecution case and unnecessary weightage should not be given to minor errors or lapses. Particularly, in offences relating to women and children, which are on rise, the courts will have to adopt a pragmatic approach. No scope must be given to absurd and fanciful submissions. [para 11] [348-B-E] E F

1.5 The time taken to send special report to the Magistrate also has no adverse impact on the prosecution case. The FIR was lodged promptly on 1.7.1991 at 2.10 p.m. after PW-2 got to know about his daughter's death. It reached the Magistrate at 7.00 p.m. on 2.7.1991. In the facts of the case, this time lag could not be termed as delay. In any case, requirement of sending special report to the Magistrate is an external check on the working of police agency but not in all G H

A cases that delay will make the prosecution case doubtful.
[para 12] [348-F-G]

B 1.6 The prosecution has established its case beyond reasonable doubt so far as the appellant is concerned. The trial court fell into a grave error in acquitting him. The trial court's order is indeed perverse. The High Court rightly interfered with it. The view taken by the High Court, is the only possible and correct view in the facts of the case and the same is confirmed. [para 13] [349-B-C]

C CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1023 of 2008.

D From the Judgment and Order dated 16.05.2007 & 17.05.2007 of the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 224DBA of 1996.

Vishal Yadav, S.P. Singh, Rupinder Sheroen, Ajay Pal for the Appellant.

Anvita Cowshish, Kuldip Singh for the Respondent.

E The Judgment of the Court was delivered by

F (SMT.) RANJANA PRAKASH DESAI, J. 1. In this appeal judgment and order dated 16/17-05-2007 passed by the Punjab and Haryana High Court is under challenge.

G 2. The appellant is original accused no. 4. He was tried along with Gurdev Singh, Surjit Kaur and Jaswinder Singh, original accused nos. 1, 2 and 3 respectively, by the Additional Sessions Judge, Ludhiana in Sessions Trial No. 16 of 1994 for offence punishable under Section 304B of the IPC. Learned Sessions Judge by judgment dated 31/08/1995 acquitted all the accused. The State of Punjab carried an appeal from the said order to the High Court of Punjab and Haryana. By the impugned judgment and order dated 16/17-05-2007 the High Court set aside the order of acquittal so far as the appellant is

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concerned. He was convicted under Section 304B of the IPC and sentenced to undergo RI for seven years. He was directed to pay compensation of Rs.20,000/- to the father of the deceased. In default he was directed to suffer RI for one year. The High Court noted that accused no. 1 Gurdev Singh was dead. So far as accused no. 2 Surjit Kaur and accused no. 3 Jaswinder Singh are concerned, the High Court gave them benefit of doubt and confirmed their acquittal. Being aggrieved by his conviction and sentence the appellant has approached this Court.

Case of the Prosecution

3. The appellant was married to deceased Karnail Kaur ("the deceased" or "Karnail Kaur") in May, 1989. Accused no. 1 Gurdev Singh was his father. Accused no. 2 Surjit Kaur is his mother and accused no. 3 Jaswinder Singh is his brother. The prosecution story is unfolded by PW-2 Labh Singh, father of the deceased. He stated that on 25/06/1991 he went to meet the deceased to the house of the appellant along with PW-3 Surjit Singh. The appellant who was employed in the Army had come home on leave. The deceased was in tears. She told PW-2 Labh Singh that the appellant and the other accused were demanding a scooter and a refrigerator and that her life was in danger. PW-2 Labh Singh told her that he would meet the demand after the Sauni Crop. On 01/07/1991 he was told by Pritam Singh, a resident of Dehlon, that Karnail Kaur had died on 30/06/1991. On 01/07/1991 when he was proceeding to the police station to lodge FIR, he met PW-4 ASI Mohinder Singh, who recorded his statement. PW-4 ASI Mohinder Singh forwarded it to the police station and a formal FIR was registered at P.S. Samrala under Section 304B of the IPC against the accused. The accused were arrested. After completion of investigation they were sent up for trial.

The trial

4. The prosecution examined PW-1 Dr. Gurmit Singh, who

A had conducted the post-mortem, PW-2 Labh Singh, PW-3 Surjit Singh and police witnesses PW-4 ASI Mohinder Singh, PW-5 HC Kalmit Singh, PW-6 SI Manminder Singh and PW-7 Constable Angrej Singh. The appellant and the other accused denied the prosecution case.

B **The view taken by the trial court**

5. The trial court acquitted all the accused on the ground that evidence of PW-1 Dr. Gurmit Singh, PW-4 ASI Mohinder Singh and affidavit filed by PW-7 Constable Angrej Singh indicate that the case property, that is the contents of stomach of the deceased and other material, handed over by PW-1 Dr. Gurmit Singh to him remained in his personal custody for one day and, therefore, the possibility of its tampering cannot be ruled out. Therefore, the Chemical Analyser's report stating that poison was detected therein cannot be relied on. The trial court also held that there was delay in sending special report to the Magistrate from which it could be inferred that the FIR was antedated. The trial court further held that while PW-2 Labh Singh stated that the deceased told him about the dowry demand in the room, PW-3 Surjit Singh stated that the deceased talked to them in the verandah. Thus, there is variance in their statements. Moreover, the deceased could not have told them about the dowry demand in the presence of the accused. The trial court, thus, concluded that the prosecution had not proved its case beyond reasonable doubt and acquitted the accused.

F **The High Court's view**

6. The High Court held that the inference drawn by the trial court that the case property might have been tampered with is without any basis. The High Court held that the evidence of PW-2 Labh Singh and PW-3 Surjit Singh established that the deceased was subjected to harassment for dowry and that the time taken to forward the special report to the Magistrate did not make the prosecution case suspect. Taking note of the fact that Karnail Kaur had died within seven years of marriage, the

High Court convicted the appellant as aforesaid. The High Court confirmed the acquittal of mother and brother of the appellant by giving them benefit of doubt. A

Submissions of the counsel

7. We have heard learned counsel for the parties at some length. Mr. Vishal Yadav, learned counsel for the appellant reiterated all the points which the trial court had taken into consideration while acquitting the accused which we have quoted hereinabove and stated that the High Court erred in disturbing the trial court's well reasoned judgment. He submitted that the trial court's view was a reasonably possible view which the High Court should not have disturbed even if it felt that another view of the matter was possible. Counsel submitted that the deceased was married to the appellant in May, 1989. PW-2 Labh Singh stated that on 25/06/1991 the deceased told him about the harassment and demand for dowry. There is no evidence to show that from May, 1989 to 25/06/1991 there was harassment for dowry. Counsel submitted that in the FIR PW-2 Labh Singh stated that Pritam Singh told him that Karnail Kaur had died. But, he improved his story in the court and stated that Pritam Singh told him on 01/07/1991 that Karnail Kaur had been killed a day earlier. Thus, he is not a reliable witness. Counsel pointed out that there is overwriting in the inquest report Exhibit-PC with the intention to match it with time given in the FIR. Counsel submitted that post-mortem notes do not show presence of cyanosis. Therefore, the prosecution case that Karnail Kaur died of poisoning is doubtful. In the circumstances, impugned judgment deserves to be set aside. Ms. Anvita Cowshish, learned counsel for the State of Punjab submitted that the evidence of PW-2 Labh Singh and PW-3 Surjit Singh and the Chemical Analyser's report bear out the prosecution story and hence the appeal be dismissed. B
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Our view and conclusion

8. Admittedly, Karnail Kaur died within seven years of H

A marriage, therefore, presumptions under Section 304B of the IPC and Section 113B of the Indian Evidence Act, 1872 are attracted to this case. It is for the appellant to rebut it, which, in our opinion the appellant has failed to do.

B 9. We have already noted the gist of PW-2 Labh Singh's
evidence. He has given the details of articles given to the
appellant and his family as dowry and stated that after marriage
the attitude of the accused was hostile towards the deceased.
Thereafter, he has described his visit to the appellant's house
C along with PW-3 Surjit Singh on 25/06/1991 when the
deceased, who was in tears, told him about the dowry demand
of the accused. The appellant was present there. PW-3 Surjit
Singh, who had accompanied PW-2 Labh Singh, corroborates
PW-2 Labh Singh on this aspect. They are rustic witnesses.
D Their evidence must be read bearing their simple background
in mind. PW-2 Labh Singh had lost his daughter. Besides, they
were deposing in 1994, almost three years after the incident.
Hence, allowance must be made for minor discrepancies, if
any, in their evidence. In any case, by and large, their evidence
is consistent. Only discrepancy which is pointed out by the
E appellant's counsel is that while PW-2 Labh Singh stated that
the deceased told them about the demand in the room, PW-3
Surjit Singh stated that she talked to them in the verandah.
Evidence of witnesses cannot be rejected on such minor
F inconsistencies. We also do not find any substance in the
contention that the deceased could not have talked about the
dowry demand in the presence of the accused. The deceased
appears to have reached a point of desperation. She stated
that her life was in danger. It appears that she had no option
but to tell PW-2 Labh Singh about her miserable existence. One
G wonders whether she would have been allowed to share some
moments with the father alone. Pertinently, shortly thereafter, she
took poison. It is not correct to say that from the date of
marriage till the date of incident there was no harassment to
the deceased. PW-2 Labh Singh stated that after the marriage
H the attitude of the accused towards the deceased was hostile.

Besides, the demand was made on 25/06/1991 and the deceased died on 01/07/1991. Thus, the harassment for dowry was soon before the death of Karnail Kaur, as required by Section 304B of the IPC and Section 113B of the Evidence Act, 1872. A

10. PW-1 Dr. Gurmit Singh did the post-mortem of the deceased. The stomach contents were sent to the Chemical Analyser. The finding of the Chemical Analyser reads thus: B

"Aluminium phosphate a pesticide was detected in the contents of exhibit NO. 1. Phosphine a constituent of aluminium phosphide was detected in the contents of exhibits No. II and No. III poison was detected in the contents of exhibit NO. IV" C

Thus, the deceased died of poisoning. She had consumed Aluminium Phosphate, a pesticide. D

11. PW-1 Dr. Gurmit Singh is an independent witness. He stated that post-mortem was conducted on 01/07/1991. There is no reason to disbelieve him. He stated that he handed over the case property to PW-7 Angrej Singh on 01/07/1991. PW-7 Angrej Singh in his affidavit appears to have stated that post-mortem was conducted on 02/07/1991 and he handed over the case property to PW-4 ASI Mohinder Singh on 02/07/1991. It is contended that since PW-1 Dr. Gurmit Singh stated that case property was handed over to PW-7 Angrej Singh on 01/07/1991, then, it remained in the personal custody of PW-7 Angrej Singh for a day. Therefore, the case property might have been tampered with. No suggestion was put to PW-1 Dr. Gurmit Singh that post-mortem was not conducted on 01/07/1991. PW-1 Dr. Gurmit Singh has stated that all the parcels were sealed and handed over to PW-7 Angrej Singh. PW-7 Angrej Singh has confirmed that all the parcels were sealed, they were deposited in Malkhana and then taken to the laboratory. There is, therefore, no question of any tampering with the case property. We do not see any foul play in this. There appears to H

A be mistake in giving the dates. It is too much to presume that
 the doctor and the Chemical Analyser would conspire and
 fabricate a false report. Similarly, the overwriting in the inquest
 report is inconsequential. It could be a mere inadvertent lapse.
 B lapses are given undue importance every criminal case will end
 in acquittal. While it is true that the police should not involve
 innocent persons, fabricate evidence and obtain convictions,
 it is equally true that cases in which substratum of the
 C prosecution case is strong and substantiated by reliable
 evidence, lapses in investigation should not persuade the court
 to reject the prosecution case. The court with its vast experience
 should be quick to notice mischief if there is any. Incompetent
 prosecuting agencies or prosecuting agencies which are driven
 by extraneous considerations should not be allowed to take the
 D court for a ride. Particularly in offences relating to women and
 children, which are on rise, the courts will have to adopt a
 pragmatic approach. No scope must be given to absurd and
 fanciful submissions. It is true that there can be no compromise
 on basic legal principles, but, unnecessary weightage should
 not be given to minor errors or lapses. If courts get carried away
 E by every mistake or lapse of the investigating agency, the guilty
 will have a field day. The submissions relating to alleged
 overwriting and discrepancies in timings and dates, therefore,
 are rejected.

F 12. We also do not find that time taken to send special
 report to the Magistrate has any adverse impact on the
 prosecution case. The FIR was lodged promptly on 01/07/1991
 at 2.10 p.m. after PW-2 Labh Singh got to know about his
 daughter's death. It reached the Magistrate at 7.00 p.m. on 02/
 G 07/1991. We do not think that in the facts of this case this time
 lag could be termed as delay. In any case, requirement of
 sending special report to the Magistrate is an external check
 on the working of police agency but not in all cases that delay
 will make the prosecution case doubtful. We do not find any
 H indication in this case from any evidence on record that the

prosecution case is untrue or fabricated. We reject this submission. A

13. The mother and brother of the appellant have been acquitted by giving them benefit of doubt. So far as the appellant is concerned, the prosecution has established its case beyond reasonable doubt. The trial court fell into a grave error in acquitting him. The trial court's order is indeed perverse. The High Court rightly interfered with it. The view taken by the High Court, which is confirmed by us, is the only possible and correct view in the facts of this case. The appeal is, therefore, dismissed. The appellant is on bail. His bail bonds stand cancelled. He shall surrender before the concerned court. B C

R.P.

Appeal dismissed.