

BHOLA RAM
v.
STATE OF PUNJAB
(Criminal Appeal No. 1022 of 2008)

NOVEMBER 11, 2013

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

Penal Code, 1860 – ss.304B & 498A – Sister-in-law of appellants committed suicide within few years of marriage – Allegations of dowry death – Conviction of appellants – Justification – Held: Not justified – Appellants deserve acquittal since no evidence inculpating him – No definite allegation made by any of the witnesses including PW-2 (deceased's father) or anybody from his family that appellants had demanded any additional dowry from him or anybody in his family or had treated the deceased with cruelty or in a humiliating manner so as to make him complicit in the dowry death – Appellant may have been a silent or a passively conniving participant, but nothing on record to suggest that he had either actively made such a demand or that the demanded amount was sought to be utilized for his benefit either directly or indirectly – Presumption available u/s.113-B of the Evidence Act, 1872 to conclude that deceased's death was a dowry death cannot be stretched to implicate all and sundry in the family of deceased's husband in demanding additional dowry from deceased's family and harassing her and treating her with such cruelty that she had to resort to taking her life – Mere fact that all family members of the deceased's husband were living together, did not alter the factual situation – In absence of the prosecution proving the ingredients of s.304-B, initial burden cast on it not discharged – Therefore, presumption u/s.113-B of the Evidence Act

A cannot be attracted – Appellant acquitted – Evidence Act, 1872 – s.113B.

B The sister-in-law of the appellant committed suicide by consuming poison within few years of marriage. The appellant was convicted by both the Trial Court and the High Court under Sections 304-B and 498-A IPC for causing dowry death, and there fore the instant appeal.

C It was submitted on behalf of the appellant that in fact there was no specific allegation against him; that the statements of all the witnesses were omnibus or generic in nature; and that in the absence of any particular allegation, demands for dowry made by the deceased’s husband cannot be attributed to the appellant and under these circumstances, there was really no evidence to uphold his conviction.

Allowing the appeal, the Court

E HELD: 1. The Sessions Judge found that there was no evidence that the sister-in-law and the other brother-in-law of the deceased made demands for additional dowry from PW-2, the deceased’s father. Accordingly, they were acquitted at the trial stage itself. Therefore, the segregation process, based on the evidence on record, had begun at the trial stage. This is clearly because in a dowry death, some actors play an active role while others play a passive role. Consequently, to sustain the conviction of the appellant, there must be some suggestive evidence and not generic evidence implicating him in the demand for additional dowry from PW-2. [Para 22] [582-G-H; 583-A-B]

Law Commission of India (LCI) in its 91st Report of 10th August, 1983 (in paragraph 1.8) – referred to.

H 2. So far as this case is concerned, no definite

allegation has been made by any of the witnesses including PW-2 or anybody from his family that the appellant had demanded any additional dowry from him or anybody in his family or had treated the deceased with cruelty or in a humiliating manner so as to make him complicit in the dowry death. It is true that there was a demand of dowry of Rs.10,000/- which was paid by PW-2 by borrowing this amount from PW1, but that demand was for the purchase of a car for use by the deceased's husband. Under the circumstances, it can safely be presumed that the deceased's husband made the demand for additional dowry for his benefit. The appellant may have been a silent or a passively conniving participant, but there is nothing on record to suggest that he had either actively made such a demand or that the demanded amount was sought to be utilized for his benefit either directly or indirectly. Similarly, the evidence on record does not show that the demand of another amount of Rs.30,000/- from PW1 just a fortnight before the deceased took her life was made by the appellant to purchase articles for the service station being set up by him and the deceased's husband. At best, it could be said that this amount was intended for use for the joint business venture of the appellant and the deceased's husband. Given that the earlier demand for additional dowry was made for the benefit of the deceased's husband, it is more than likely that this demand was also made by him. In any event, there is again nothing to suggest that the appellant was in any manner actively concerned in making the demand directly or indirectly from PW2. Consequently, there is no evidence to suggest any active complicity of the appellant in demanding any additional dowry from PW2 either for himself or for the deceased's husband or his proposed business venture. [Paras 25, 27, 28 & 29] [583-H; 584-A-B, G-H; 585-A-D]

3. Merely making a demand for dowry is not enough to

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A bring about a conviction under Section 304-B of the IPC. A
 dowry death victim should also have been treated with
 cruelty or harassed for dowry either by her husband or a
 relative. In this case, even assuming the silent or conniving
 participation of the appellant in the demands for dowry,
 B there is absolutely no evidence on record to suggest that
 he actively or passively treated deceased with cruelty or
 harassed her in connection with, or for, dowry. The High
 Court, unfortunately, did not advert to this ingredient of an
 offence punishable under Section 304-B of the IPC or even
 C considered it. [Para 30] [585-E-G]

Kans Raj v. State of Punjab (2000) 5 SCC 2007: 2000
 (3) SCR 662 – relied on.

4. The High Court has relied on the presumption
 D available under Section 113-B of the Evidence Act, 1872
 to conclude that deceased's death was a dowry death.
 However, this presumption cannot be stretched to
 implicate all and sundry in the family of deceased's
 husband in demanding additional dowry from
 E deceased's family and harassing her and treating her
 with such cruelty that she had to resort to taking her life.
 There is a possibility of members of the family having
 varying roles, active and passive. Depending on the
 nature and extent of involvement, a person may be
 F punished for an offence under Section 498-A or Section
 304-B or Section 306 of the IPC or Section 4 of the Dowry
 Prohibition Act, 1961. A dowry death will not *ipso facto*
 suck the husband with all his relatives into the net of
 Section 304-B IPC. While the appellant and the other two
 G convicts (husband and mother-in-law of the deceased)
 may be staying together, it does not lead to any positive
 conclusion that each one of them was actively involved
 in demanding additional dowry from the deceased and
 also behaving in a cruel or humiliating manner towards
 her resulting in her consuming poison to end her life. In
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cases of this nature which attract a reverse onus of proof, the least that is expected of the prosecution to bring home a charge under Section 304-B IPC is to adduce some evidence to suggestively implicate a relative, in this case, to suggestively implicate the appellant both in the demands for additional dowry and harassment or cruelty. Such evidence is not available on record and so the mere fact that all the members of the family of the deceased's husband were living together, would not alter the factual situation. [Paras 31, 32] [585-G-H; 586-A-F]

5. Consequently, in the absence of the prosecution proving the ingredients of Section 304-B of the IPC, the initial burden cast on it has not been discharged. Therefore, the presumption under Section 113-B of the Evidence Act cannot be attracted. The appellant deserves acquittal since there is no evidence inculcating him. [Paras 1, 33] [578-B-C; 586-G-H]

Case Law Reference:

2000 (3) SCR 662 relied on Para 26

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1022 of 2008.

From the Judgment and Order dated 05.07.2004 of the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 25 SB of 1992.

R.K. Kapoor, Shiwani Mahipal, Rajat Kapoor, Shweta Kapoor, Anis Ahmed Khan for the Appellant.

V. Madhukar AAG, Ms. Anvita C., Kuldip Singh for the Respondent.

The Judgment of the Court was delivered by

MADAN B. LOKUR, J. 1. The question for consideration

A is whether the appellant Bhola Ram was rightly convicted by
both the Trial Court and the High Court for having caused the
dowry death of Janki Devi, an offence punishable under Section
304-B and Section 498-A of the Indian Penal Code (IPC). In
our opinion, Bhola Ram deserves an acquittal since there is
B no evidence inculcating him.

The facts:

2. Darshan Ram married Janki Devi on 30th June, 1986
after which they resided in Darshan Ram's house in village
C Mehma Sarja. The couple has a female child.

3. At the time of their marriage, Janki Devi's family gave
dowry within their means to Darshan Ram and his family. But
according to the prosecution, his brothers Parshottam Ram and
D Bhola Ram (the appellant) and his sister Krishna Devi and
mother Vidya Devi demanded more dowry from time to time.

4. Janki Devi's family was unable to fulfill the additional
demands for dowry and, according to the prosecution, she was
E humiliated and cruelly treated by Darshan Ram's family for their
incapacity. Being unable to face the harassment, cruelty and
humiliation meted out by Darshan Ram's family, Janki Devi
consumed poison and thereby committed suicide on 6th
September, 1989.

F 5. About one and a half months before her death, a
demand for Rs. 10,000/- was made by Janki Devi's in-laws for
the purchase of a car. Janki Devi's father PW-2 Nath Ram
borrowed this amount from PW-1 Nirbhai Singh for meeting the
dowry demand. The amount was then handed over by him to
G Darshan Ram in the presence of other members of his family.

6. Unfortunately, Darshan Ram's family was not fully
satisfied with this payment. According to the prosecution, about
a fortnight before her death, Janki Devi came to her father and
H told him that there was a further demand for an amount of Rs.

30,000/- for purchasing some articles for a service station proposed to be run by Darshan Ram and Bhola Ram. Thereupon, Nath Ram accompanied Janki Devi to her matrimonial home and informed Darshan Ram and the other accused that he would not be able to pay this amount. On this, Darshan Ram's family informed him that he should pay the amount failing which he could take Janki Devi back with him. Nath Ram requested the family not to insist on the demand and left Janki Devi at her matrimonial home in village Mehma Sarja.

7. On 3rd September, 1989 PW-3 Des Raj, the brother of Nath Ram's wife, informed Nath Ram about Janki Devi being ill-treated on account of Nath Ram's inability to meet the additional demand for dowry. Again on 5th September, 1989 Des Raj informed Nath Ram that Janki Devi wanted to meet Nath Ram and was weeping in his presence.

8. On receiving this information, Nath Ram went to village Mehma Sarja along with his brother PW-4 Sukhdev Ram. When they reached the bus stand in the village they were informed that Janki Devi had consumed poison and had taken her life, having suffered more than enough cruelty at the hands of the family of Darshan Ram. Nath Ram and Sukhdev Ram then proceeded to Janki Devi's matrimonial home and found her lying there but no one from Darshan Ram's family was present in the matrimonial home.

9. Nath Ram then lodged a First Information Report (FIR) in Police Station Nehianwala. On the basis of the FIR PW-7 Manminder Singh prepared an inquest report in the presence of Sukhdev Ram. On the next day, that is 7th September, 1989 PW-5 Dr. Tirath Goyal performed an autopsy on the dead body of Janki Devi. He noted that froth was coming out from her nose and mouth. Her viscera were sent to the Chemical Examiner who reported that Janki Devi had died due to having consumed an organo phosphorus insecticide which was poisonous and sufficient to cause death in the ordinary course of nature.

A 10. On the basis of the above details and further investigations, a charge sheet was filed against Darshan Ram and four members of his family (including Bhola Ram) under Section 304-B and Section 498-A of the IPC for causing the dowry death of Janki Devi.

B 11. The accused pleaded not guilty and were tried by the Sessions Judge at Bathinda.

Decision of the Trial Judge

C 12. In his Judgment and Order dated 3rd December, 1991 the Sessions Judge at Bathinda in Sessions Case No. 35 of 15th May, 1990 held that Section 304-B of the IPC required the prosecution to establish four ingredients, namely: (i) the death of a woman is caused by any burns or bodily injury or
D occurs otherwise than under normal circumstances, (ii) such death should have occurred within seven years of her marriage, (iii) soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband, and (iv) such cruelty or harassment should be for, or in connection
E with, any demand for dowry. In the present case, all four ingredients were established by the prosecution.

F 13. It was further held that Darshan Ram, Bhola Ram and their mother Vidya Devi were living together in the same house at village Mehma Sarja and that they had demanded additional dowry from Janki Devi's family. However, Parshottam Ram and Krishna Devi were living separately and they could not be said to have caused the dowry death of Janki Devi. Consequently, Parshottam Ram and Krishna Devi were found not guilty of the charges framed against them and they were acquitted.
G However, the Sessions Judge found that Darshan Ram, Bhola Ram and Vidya Devi, by their attitude and behaviour, caused Janki Devi to take the extreme step of taking her own life. These three accused were accordingly convicted for offences punishable under Section 304-B and Section 498-A of the IPC
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and sentenced to undergo rigorous imprisonment for a period of 7 years with fine for the offence under Section 304-B of the IPC and 2 years rigorous imprisonment for the offence under Section 498-A of the IPC.

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14. The accused preferred two appeals (one by Vidya Devi and the other by Darshan Ram and Bhola Ram) against their conviction and sentence in the High Court of Punjab and Haryana.

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Decision of the High Court

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15. In so far as Vidya Devi is concerned, her conviction was upheld by the High Court and she preferred a Special Leave Petition in this Court. She was granted special leave to appeal but during the pendency of her appeal she passed away and accordingly her appeal was disposed of.

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16. Darshan Ram and Bhola Ram preferred a joint appeal in the High Court being Criminal Appeal No. 25 SB of 1992. This appeal was heard by a learned Single Judge who by his Judgment and Order dated 5th July, 2004 upheld their conviction and sentence.

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17. The High Court held that Vidya Devi, Darshan Ram and Bhola Ram were all residing together in the same house at village Mehma Sarja. It was held that the amount of Rs. 10,000/- initially taken from Nath Ram was used to purchase a car for Darshan Ram and that car was being plied as a taxi by him. It was also held that a service station was at the initial stages of being established by Darshan Ram and Bhola Ram and that they needed Rs. 30,000/- for expenses in connection with that venture. Since all three convicts were residing together at village Mehma Sarja, they were equally responsible for demanding additional dowry from Janki Devi and her father and thereby compelling her to take her life.

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18. It appears that Darshan Ram has not challenged the

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A Judgment and Order of the learned Single Judge and his conviction and sentence have attained finality.

B 19. We are, therefore, only concerned with the appeal filed by Bhola Ram who challenged his conviction and sentence in this Court and was granted special leave to appeal on 8th July, 2008. He was also granted bail by this Court on the same day and we are told that even today, he is on bail.

Discussion

C 20. Learned counsel for Bhola Ram submitted that in fact there is no specific allegation against him. The statements of all the witnesses are omnibus or generic in nature and Darshan Ram and other members of his family have been generally accused of having demanded additional dowry from Janki D Devi's family. It is submitted that in the absence of any particular allegation, demands for dowry made by Darshan Ram cannot be attributed to Bhola Ram and under these circumstances, there is really no evidence to uphold his conviction.

E 21. On the other hand, it was submitted by learned counsel for the State that the three convicts were jointly and directly concerned with the demands of additional dowry made on Janki Devi and her family. Consequently, it is not possible to segregate the case of Bhola Ram from that of the other two convicts.

G 22. We are unable to accept the contention of learned counsel for the State. The Sessions Judge found that there was no evidence that Parshottam Ram and Krishna Devi made demands for additional dowry from Nath Ram. Accordingly, they were acquitted at the trial stage itself. Therefore, the segregation process, based on the evidence on record, had begun at the trial stage. This is clearly because in a dowry death, some actors play an active role while others play a passive role. Consequently, to sustain the conviction of Bhola H

Ram, there must be some suggestive evidence and not generic evidence implicating him in the demand for additional dowry from Nath Ram.

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23. As observed by the Law Commission of India (LCI) in its 91st Report of 10th August, 1983 (in paragraph 1.8) the truth may not come in a dowry death case due to the sequestered nature of the offence. This is what the LCI said:

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“Those who have studied crime and its incidence know that once a serious crime is committed, detection is a difficult matter and still more difficult is successful prosecution of the offender. Crimes that lead to dowry deaths are almost invariably committed within the safe precincts of a residential house. The criminal is a member of the family; other members of the family (if residing in the same house) are either guilty associates in crime, or silent but conniving witnesses to it. In any case, the shackles of the family are so strong that truth may not come out of the chains. There would be no other eye witnesses, except for members of the family.”

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24. This passage also clearly brings out that in a case of a dowry death, every member of the family may not be fully and equally guilty. The degree of involvement may differ – as an associate, as a silent witness, as a conniving witness and so on.

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25. So far as this case is concerned, we have gone through the evidence of all the witnesses on record and while there is no doubt that Janki Devi died an unnatural death within a few years of her marriage to Darshan Ram, no definite allegation has been made by any of the witnesses including Nath Ram or anybody from his family that Bhola Ram had demanded any additional dowry from him or anybody in his family or had treated Janki Devi with cruelty or in a humiliating manner so as to make him complicit in the dowry death.

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A 26. In *Kans Raj v. State of Punjab*, (2000) 5 SCC 207 the ingredients of an offence under Section 304-B of the IPC were held to be as follows:

B "In order to seek a conviction against a person for the offence of dowry death, the prosecution is obliged to prove that:

C (a) the death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances;

(b) such death should have occurred within 7 years of her marriage;

D (c) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband;

(d) such cruelty or harassment should be for or in connection with the demand of dowry; and

E (e) to such cruelty or harassment the deceased should have been subjected soon before her death."

F 27. It is true that there was a demand of dowry of Rs. 10,000/- which was paid by Nath Ram by borrowing this amount from Nirbhai Singh, but that demand was for the purchase of a car for use by Darshan Ram. Under the circumstances, it can safely be presumed that Darshan Ram made the demand for additional dowry for his benefit. Bhola Ram may have been a silent or a passively conniving participant, but there is nothing on record to suggest that he had either actively made such a demand or that the demanded amount was sought to be utilized for his benefit either directly or indirectly.

H 28. Similarly, the evidence on record does not show that

the demand of another amount of Rs.30,000/- from Nath Ram just a fortnight before Janki Devi took her life was made by Bhola Ram to purchase articles for the service station being set up by him and Darshan Ram at village Nehianwala. At best, it could be said that this amount was intended for use for the joint business venture of Bhola Ram and Darshan Ram. Given that the earlier demand for additional dowry was made for the benefit of Darshan Ram, it is more than likely that this demand was also made by him. In any event, there is again nothing to suggest that Bhola Ram was in any manner actively concerned in making the demand directly or indirectly from Nath Ram.

29. Consequently, we do not find any evidence to suggest any active complicity of Bhola Ram in demanding any additional dowry from Nath Ram either for himself or for Darshan Ram or his proposed business venture.

30. Merely making a demand for dowry is not enough to bring about a conviction under Section 304-B of the IPC. As held in *Kans Raj* a dowry death victim should also have been treated with cruelty or harassed for dowry either by her husband or a relative. In this case, even assuming the silent or conniving participation of Bhola Ram in the demands for dowry, there is absolutely no evidence on record to suggest that he actively or passively treated Janki Devi with cruelty or harassed her in connection with, or for, dowry. The High Court has, unfortunately, not adverted to this ingredient of an offence punishable under Section 304-B of the IPC or even considered it.

31. The High Court has relied on the presumption available under Section 113-B of the Evidence Act, 1872 to conclude that Janki Devi's death was a dowry death. However, this presumption cannot be stretched to implicate all and sundry in Darshan Ram's family in demanding additional dowry from Janki Devi's family and harassing her and treating her with such cruelty that she had to resort to taking her life. As mentioned

- A above, there is a possibility of members of the family having varying roles, active and passive. Depending on the nature and extent of involvement, a person may be punished for an offence under Section 498-A or Section 304-B or Section 306 of the IPC or Section 4 of the Dowry Prohibition Act, 1961. A dowry death will not *ipso facto* suck the husband with all his relatives into the net of Section 304-B of the IPC.

32. It was contended by learned counsel for the State that Darshan Ram, Bhola Ram and Vidya Devi were living together at village Mehma Sarja and so their active involvement in the dowry death cannot be ruled out. While these persons may be staying together, it does not lead to any positive conclusion that each one of them was actively involved in demanding additional dowry from Janki Devi and also behaving in a cruel or humiliating manner towards her resulting in her consuming poison to end her life. In cases of this nature which attract a reverse onus of proof, the least that is expected of the prosecution to bring home a charge under Section 304-B of the IPC is to adduce some evidence to suggestively implicate a relative, in this case, to suggestively implicate Bhola Ram both in the demands for additional dowry and harassment or cruelty. Such evidence is not available on record and so the mere fact that all the members of Darshan Ram's family were living together at village Mehma Sarja, would not alter the factual situation.

33. Consequently, in the absence of the prosecution proving the ingredients of Section 304-B of the IPC, the initial burden cast on it has not been discharged. Therefore, the presumption under Section 113-B of the Evidence Act cannot be attracted.

Conclusion

34. Based on the evidence available on record (or the lack

of it) we have no doubt that the appeal filed by Bhola Ram ought to be allowed. It is accordingly allowed and he is acquitted of the charges against him under Section 304-B and Section 498-A of the IPC in relation to the death of Janki Devi. A

35. The appeal is allowed and the conviction and sentence of Bhola Ram is set aside. B

Post script

36. What is a little disturbing about this case is that it is illustrative of the slow movement of the wheels of criminal justice delivery. The dowry death took place on 6th September, 1989. The Trial Court pronounced its decision on 3rd December, 1991 within two years of Janki Devi's death. The first appeal was decided by the High Court on 5th July, 2004 which is more than twelve years later. A petition for special leave to appeal was filed in this Court in 2004 and leave was granted only after a gap of four years in 2008. Thereafter this appeal was listed for hearing as if it is an appeal of 2008 rather than a petition of 2004 thereby wiping away four years of its age in this Court. And even then, it has taken another five years for its disposal, making a total of nine years spent in this Court. It is high time those of us who are judges of this Court and decision makers also become policy makers. C
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Appeal Allowed. F