

SATYA PAL

v.

STATE OF HARYANA & ANR.
(Criminal Appeal Nos. 1447-1448 of 2007)

MARCH 13, 2013

[A.K. PATNAIK AND SUDHANSU JYOTI
MUKHOPADHAYA, JJ.]

Penal Code, 1860 - ss.304B and 498A - Prosecution u/ ss. 302/34 and 304B - Acquittal by trial Court - Conviction by High Court u/ss. 304B and 498A - Held: Conviction justified - In view of the prosecution evidence, High Court rightly held that the deceased was subjected to demand of dowry as well as cruelty and harassment in connection with such demand, soon before her death - High Court also rightly drew presumption u/s.113 B of Evidence Act that the appellant-accused caused dowry death - Evidence Act, 1872 - s.113B.

Code of Criminal Procedure, 1973 - Explanation to s.161 - Police statement - Omission of a fact or circumstance - The question whether the omission amounts to contradiction is a question of fact which is to be determined by the Court.

Appellant-accused, alongwith his other relatives was prosecuted u/ss. 302/34, 304B IPC, for killing his wife. Trial court acquitted all the accused of all the charges. High Court reversed the acquittal order and convicted the appellant u/ss.304B and 498A IPC. Hence the present appeal by the appellant-accused.

Dismissing the appeal, the Court

HELD: 1. The High Court was right in reversing the judgment of acquittal against the appellant so far as the offences u/ss. 304B and 498A IPC are concerned. [Para 10] [752-B]

A 2. The High Court was right in coming to the
conclusion on the basis of the evidence of P.Ws 1 and 2
that there was in fact a demand of television, fridge and
cooler about two months after the earlier demand of
B followed by beatings and harassment so much so that a
visit had to be made by P.W. 1 to the matrimonial house
of the deceased to persuade the appellants and his
family members not to make the demands and soon
thereafter the deceased died. [Para 7] [750-D-F]

C 3. The explanation to Section 161 Cr.P.C. states that
an omission to state a fact or circumstance in the
statement made to the police may amount to
D contradiction, if the same appears to be significant and
otherwise relevant having regard to the context in which
such omission occurs and whether any omission
amounts to a contradiction in the particular context shall
be a question of fact. It was, therefore, for the Court to
decide whether the omission in the statement of P.W 2
E about the beatings given to the deceased before the
police was significant enough for the Court to disbelieve
that the deceased was beaten in connection with the
demand for dowry. Considering the evidence of P.W. 1
and P.W. 2 in its entirety, the High Court was right in
F coming to the finding that the deceased was not only
subjected to a subsequent demand of dowry but also
subjected to cruelty and harassment in connection with
such demand for dowry soon before her death and that
the trial court had not taken a correct view on the
evidence of P.W. 1 and PW 2. [Para 8] [751-A-D]

G 4. The High Court had also rightly drawn the
presumption u/s. 113B of the Evidence Act that appellant
had caused the dowry death of the deceased within the
meaning of Section 304B IPC and the appellant was
H required to rebut this presumption that he had caused

the dowry death. The appellant did make an attempt to rebut this presumption in his statement under Section 313 Cr.P.C. but he failed to rebut the presumption that it is he who had caused dowry death of the deceased within the meaning of Section 304B IPC. [Para 9] [751-E-F, H; 752-A]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 1447-1448 of 2007.

From the Judgment & Order dated 16.03.2007 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 334-DBA of 1997 and Crl. Revision No. 246 of 1997.

Shantanu Singh, Niraj Jha, Rakesh Dahiya for the Appellant.

Rajesh Gaur Naseem, Sudhir Bisla, Kamal Mohan Gupta for the Respondents.

The Judgment of the Court was delivered by

A.K. PATNAIK, J. 1. These are appeals against the judgment dated 16th March, 2007 of the Division Bench of the High Court of Punjab and Haryana in Criminal Appeal No. 334-DB/1997 and Criminal Appeal No.246 of 1997.

2. The facts very briefly are that a First Information Report was lodged by Sombir (the complainant) on 14th July, 1992 alleging therein, inter alia, that his sister Rajwanti was married to the appellant and after one or two months of the marriage she came home and told her mother that her in-laws were demanding dowry in the shape of a flour machine, electric motor with equipment to chop the fodder and these articles were given in December 1991, when his sister Rajwanti gave birth to male child and the in-laws of Rajwanti became happy. But thereafter Rajwanti came after sometime and told that her mother-in-law, sister-in-law and brother-in-law and husband(appellant) were demanding a fridge, cooler and TV,

A but the mother and father of Rajwanti said that if this demand is met the demands will go on increasing and Rajwanti left for her in-laws' house on 19th June, 1992. Thereafter on 12th July, 1992 at about 9:00a.m. the complainant had been to the house of Rajwanti and he saw that the appellant and Subhash pushed
B Rajwanti into a well and as a result Rajwanti died. A case was registered and investigation was conducted by the police and a charge sheet was filed against the appellant and his other family members under Sections 302/34 IPC and under Section 304B IPC.

C 3. At the trial, amongst others, the complainant was examined as P.W. 1 and the mother of Rajwanti(deceased) was examined as P.W. 2. The trial court, however, held in its judgment dated 9th October, 2006 that there was no satisfactory explanation about the inordinate delay of 51 hours
D in lodging the FIR with the police and it appears that the aforesaid time was utilised for implicating certain persons after consultations and deliberations. The trial court was thus of the opinion that the offence under Section 302/34 IPC framed against the accused persons has not been proved by the
E prosecution beyond reasonable doubt. On the charge under Section 304B IPC, the trial court found that there were improvements in the evidence of PWs. 1 and 2 over their statements made before the police under Section 161 Cr.P.C. and accordingly, disbelieved Pws 1 and 2 and held that the
F demand of dowry as well as harassment and cruelty by the appellant or any of his relatives in connection with the demand for dowry had not been proved and hence the presumption under Section 113B of the Indian Evidence Act was not attracted and the appellant and his family member could not
G be held guilty under Section 304B IPC.

H 4. The State as well as the complainant went in appeal to the High Court in separate Criminal Appeal No. 334 -DB of 1997 and Criminal Appeal No. 246 of 1997 respectively and the High Court in the impugned judgment dated 16th March,

2007 found on the basis of the evidence of Pws. 1 and 2 that after about two months from November, 1991 when the earlier demand of dowry was fulfilled on the occasion of Chuchak ceremony, the appellant and his family members made a fresh demand of television, fridge, cooler and the deceased was subjected to beatings for this fresh demand and this led P.W. 1 to make a visit to the matrimonial house of the deceased in the month of June, 1992 and he persuaded the appellant and his family members not to make such demands but on 12th July, 1992, within one month of such visit, the death of the deceased took place in the matrimonial house. The High Court, further, held that since the prosecution has been able to prove both the fact of demand of dowry in the shape of television, fridge and cooler and the fact of harassment or cruelty meted out to the deceased soon before her death, the presumption under Section 113B of the Evidence Act was attracted and the appellant has not been able to rebut the presumption and was thus guilty of the offences under Section 304B as well as under Section 498A IPC.

5. At the hearing before us, learned counsel for the appellant, vehemently submitted that the view taken by the High court on the evidence of P.Ws. 1 and 2 was not a correct view inasmuch as there were substantial improvements made by P.Ws. 1 and 2 in Court over their statements made to the police under Section 161 CrP.C. He submitted that the findings of the High Court on the basis of the evidence of P.Ws. 1 and 2 that the deceased was subjected to a subsequent demand of television, fridge and cooler and also was subjected to cruelty soon before her death were not at all correct. He submitted that the trial court was right in taking a view that the delay of 51 hours in lodging the FIR by P.W. 1 was not properly explained and, therefore, the prosecution story could not be believed.

6. We find on a reading of the judgment of the trial court that the trial court has held that the delay of 51 hours in lodging the FIR with the police by P.W. 1 was a good ground for

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A rejecting the case of the prosecution that the accused persons
were guilty of the offence under Section 302/34 IPC saying that
this time of 51 hours could have been utilised for implicating
some innocent persons after consultations and deliberations to
make out a false story. The High Court has not held the accused
B persons guilty of the offence under Section 302/34 IPC
presumably for the very same reason although an appeal was
filed by the State as well as the complainant challenging the
findings of the trial court in this regard.

C 7. So far as the charges under Section 304B and 498A
IPC are concerned, we find that the trial court has disbelieved
the evidence of Pws 1 and 2 on the ground that there have
been improvements in their evidence over what they had been
stated before the police under Section 161 CrPC and on the
ground that there were discrepancies in their evidence. We
D have gone through the evidence of P.Ws 1 and 2 and we find
that the High Court was right in coming to the conclusion on
the basis of the evidence of P.Ws 1 and 2 that there was in
fact a demand of television, fridge and cooler about two months
after the earlier demand of dowry was met in November, 1991
E on the occasion of the chuchak ceremony when the male child
was born to the deceased and this subsequent demand was
also followed by beatings and harassment so much so that a
visit had to be made by P.W. 1 to the matrimonial house of the
deceased to persuade the appellants and his family members
F not to make the demands and soon thereafter the deceased
died on 12th July, 1992.

G 8. We, however, find that P.W. 2 had not stated in her
Statement [Exhibit DA] before the Police that P.W. 1 had not
told her that the deceased was beaten by the appellant and his
family members and that the deceased was closed in a room,
but we find on a reading of the evidence of P.W. 1 that the
deceased was subjected to beatings twice or thrice for
demands of dowry. Moreover, P.W 2 when asked whether she
has told the Police about the aforesaid beatings given to
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deceased, she has said that she in fact, told the police about such beatings. The explanation to Section 161 Cr.P.C. states that an omission to state a fact or circumstance in the statement made to the police may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact. It was, therefore, for the Court to decide whether the omission in the statement of P.W 2 about the beatings given to the deceased before the police was significant enough for the Court to disbelieve that the deceased was beaten in connection with the demand for dowry. Considering the evidence of P.W. 1 and P.W. 2 in its entirety, we think that the High Court is right in coming to the finding that the deceased was not only subjected to a subsequent demand of dowry but also subjected to cruelty and harassment in connection with such demand for dowry soon before her death and that the trial court had not taken a correct view on the evidence of P.W. 1 and PW 2.

9. The High Court had also rightly drawn the presumption under Section 113B of the Evidence Act that appellant had caused the dowry death of the deceased within the meaning of Section 304B IPC and the appellant was required to rebut this presumption that he had caused the dowry death. The appellant did make an attempt to rebut this presumption in his statement under Section 313 Cr.P.C. while answering question No. 16. The appellant stated that the deceased had died a natural death because she was suffering from rheumatic pain (heart disease) and at that time she was being treated by Dr. Roop Chand at Satnali and she was also attended by Dr. Roop Chand on the day of her death. If this was the defence of the appellant in his statement under Section 313 Cr.P.C. it was incumbent upon him to have produced Dr. Roop Chand as a defence witness, but he has not done so. The result is that the appellant has failed to rebut the presumption under Section 113B of the Indian Evidence Act that it is he who had caused

A dowry death of the deceased within the meaning of Section 304B of the IPC.

B 10. We are therefore of the opinion that the High Court was right in reversing the judgment of acquittal against the appellant so far as the offences under Sections 304B and 498A are concerned and accordingly we dismiss the appeal. Since the appellant is on bail, we direct that his bail bond be cancelled and he be taken into custody forthwith to serve out the remaining sentence.

C K.K.T.

Appeal dismissed.