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RAJINDER SINGH

v.

STATE OF HARYANA

(Criminal Appeal No. 14 of 2007 etc.)

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JULY 3, 2013

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

PENAL CODE, 1860:

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ss. 304-B, 498-A and 201 read with s.34 - Dowry death - Death of bride in matrimonial home - Cremation hurried - Conviction of husband u/ss 304-B, 498-A and 201 and of other accused u/s 201/34 - Held: Prosecution has proved that the death of the bride occurred otherwise than under normal circumstances -- Statements of witnesses are trust-worthy and they stated that the deceased was subjected to harassment by her husband and other accused relatives in connection with demand for dowry just prior to her death - Further, cremation was hurried without informing the parents of bride - Accused failed to explain about presence of pesticide in the vomiting of deceased -- Therefore, the trial court rightly drew an inference of the guilt of the accused-appellants - Evidence Act, 1872 - s.113-B read with s.106.

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The appellants and two other persons were prosecuted for committing the offences punishable u/ss 304-B, 498-A and 201 IPC with s/34 IPC. The prosecution case was that marriage of the appellant (in CrI. A. No. 14 of 2007) with the daughter of PW-2 was solemnized on

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22.4.1992; that on 11.12.1992, the appellant left his wife in her parents' house for one month, when she told that the accused persons had been harassing her for bringing less dowry and she was told to bring Rs.25,000/-; that on 15.1.1993, when PW-3, the brother of the bride, was taking

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her to her in-laws house, PW-2 asked him to convey the accused persons that some money would be sent by 20.1.1993; that on 24.1.1993, PW-7 came to PW-2 and informed him that his daughter had died on the previous night and had been cremated in the morning of 24.1.1993. PW-2 lodged a report with the police, who took possession of ashes and bones from cremation ground and sent the same along with the clothes of the deceased for chemical examination. As per the FSL report "Organ Phosphorus Pesticide" was detected on the said clothes and in the vomiting of the deceased. The trial court convicted the husband of the deceased u/s 304-B, 498-A and 201 IPC and the other accused-appellants u/s 201/34 IPC. The High Court dismissed the appeals of the accused-appellants.

Dismissing the appeals, the Court

HELD: 1.1 The ingredients necessary for application of s.304-B IPC and the applicability of s.113-B of the Evidence Act were culled out by this Court in *Jaggu Ram's* case. In the instant case, the prosecution proved that the death of the bride occurred otherwise than under normal circumstances within a period of 9 months of her marriage i.e. much before seven years. The statements of PW-2 and PW-3 are trust-worthy and they stated that the deceased was subjected to harassment by her husband and other accused relatives in connection with demand for dowry just prior to her death. The prosecution having established essential ingredients, it becomes the duty of the court to raise a presumption that the accused caused dowry death. [para 16-17] [379-D; 380-E-G]

State of Rajasthan v. Jaggu Ram (2008)12 SCC 51 - relied on.

1.2 Section 106 of the Evidence Act does not relieve

A the burden of prosecution to prove guilt of the accused
beyond reasonable doubt but where the prosecution has
succeeded to prove the facts from which a reasonable
inference can be drawn regarding the existence of certain
other facts and the accused by virtue of special
B knowledge regarding such facts fails to offer any
explanation then the court can draw a different inference.
[para 15] [379-B-C]

1.3 In the instant case, the accused have failed to
explain as to why they were in a hurry to cremate the
C deceased in the early morning of 24.1.1993 while she died
in the mid night of 23/24.1.1993 i.e. within few hours. The
village of deceased's parents was not far from the village
of the accused but the reason as to why they were not
D informed about the incident and why the accused did not
wait for them to come was not explained. The accused
have also failed to explain the presence of the 'Organo
Phosphorus Pesticide' in the vomiting of the deceased,
as was noted in the F.S.L. Report. Therefore, the trial
court rightly drew an inference of the guilt of the accused-
E appellants. [para 18] [380-G-H; 381-A-B]

Case Law Reference:

(2008) 12 SCC 51 relied on Para 16

F CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 14 of 2007.

From the Judgment and Order dated 9.12.2005 of the High
Court of Punjab & Haryana at Chandigarh in Criminal Appeal
No. 392-SB of 1995.

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Crl. A. No. 15 of 2007.

Kanwaljit Kochar, Kusum Chaudhary for the Appellant.

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Roopansh Purohit, Kamal Mohan Gupta for the Respondent. A

The Judgment of the Court was delivered by

SUDHANSU JYOTI MUKHOPADHAYA, J. 1. These two appeals are directed against the common judgment dated 9th December, 2005 passed by the learned Single Judge of the Punjab and Haryana High Court at Chandigarh in two separate Criminal Appeal Nos. 392-SB of 1995 and 151-SB of 1995, whereby the learned Single Judge dismissed the appeals preferred by the accused and affirmed the conviction and sentence awarded by the Additional Session Judge, Yamuna Nagar at Jagadhri. B C

2. The appellants were tried for offences under Sections 498-A , 304-B and 201/34 IPC and after hearing the parties the learned Additional Session Judge, Jagadhri by its judgment dated 22nd February, 1995 convicted the appellant Rajinder Singh for the offences under Sections 498-A , 304-B and 201 IPC whereas other appellants, namely, Surinder Singh, Pritam Singh, Gurvinder Singh were convicted for offences under Section 201/34IPC. Accused-Appellant Rajinder Singh was sentenced to undergo RI for a period of two years and to pay a fine of Rs.500/- for offence under Section 498-A IPC, in default of payment of fine, he had to undergo further RI for six months; for offence under Section 304-B IPC he was sentenced to undergo RI for a period of seven years and for the offence under Section 201 IPC, he was sentence to undergo RI for a period of two years and to pay a fine of Rs.500/- in default of payment of fine, he was to undergo further RI for a period of six months. The other accused, namely, Surinder Singh, Pritam Singh and Gurvinder Singh were sentenced to undergo RI for a period of 2 years and to pay a fine of Rs.500/- each for the offence under Section 201/34 IPC, in default of payment of fine they were to undergo RI for a period of six months. Accused, Madan Lal had been acquitted by that judgment. D E F G

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A During the pendency of the appeal before the High Court, appellant-Pritam Singh died and his case got abated. Thus the case was confined to rest of the accused.

B 3. The case of the prosecution against the accused-
 B appellant- Rajinder Singh is that Santosh Kaur, daughter of
 Nahar Singh was married with the accused-appellant on 22nd
 April, 1992. Sufficient dowry articles were given. On 11th
 December, 1992, accused-appellant left his wife Santosh Kaur
 C in her parents house for one month when Santosh Kaur told her
 father- Nahar Singh that her father-in-law; Pritam Singh,
 husband-Rajinder Singh, brother-in-laws; Gurbinder Singh and
 Surinder Singh and Madan Lal, brother-in-law of her husband
 has been harassing her for bringing less dowry. She also told
 that they were demanding Rs.25,000/- and asked her to bring
 that amount when she came back to her in-law's house on
 D Lohri. Nahar Singh was not in a position to pay the amount
 demanded and assured his daughter that he might arrange
 some money when she would go back to her-in-law's house.
 On 15th January, 1993, when Sukhbir Singh, brother of
 Santosh Kaur, was taking her to her-in-law's house, his father-
 E Nahar Singh told him to make the accused understand that
 some money would be sent by 20th January, 1993 and that they
 should not harass her. He also informed this fact to Sucha
 Singh, Sarpanch of the village. Finally, money could not be
 arranged by 20th January, 1993. On 24th January, 1993, one
 F Pritam Singh came to the house of Nahar Singh and informed
 him that his daughter-Santosh Kaur had died during the
 intervening night of 23rd/24th January, 1993 and she had also
 been cremated in the morning of 24th January, 1993. On 25th
 G January, 1993, Nahar Singh, Sucha Singh, Sukhbir Singh and
 some other family members went to Mamliwala to the house
 of the accused and after verifying the facts, lodged a report
 before Police Station, Chhachhrauli. A case was registered and
 accused were sent for trial.

H 4. After trial, case was found to be proved against Rajinder

Singh for the offence under Sections 498-A, 304-B and 201 IPC and against Surinder Singh, Pritam Singh and Gurvinder Singh for the offence under Section 201/34 IPC; hence they were convicted for the same whereas Madan Lal was acquitted. A

5. Learned counsel for the appellant submitted that no demand of dowry and threat was ever made to the deceased or her family members. In fact no complaint in this regard was ever made by the complainant or the deceased or by anybody else to the police. No letter was written by the deceased about the demand of dowry or cash. Therefore, the impugned order is liable to be set aside. B C

6. Learned Counsel for the appellant further submitted that the Court below failed to consider the fact that the cremation was never done secretly. Cremation ceremony was attended by persons very much close to the complainant family. The deceased- Santosh Kaur never complained to anybody at neighborhood about her-in-laws or about torture or harassment or demand of dowry or cash by them. Therefore, the present case was a false and concocted story made by the prosecution. Further, according to him PW-2, Nahar Singh, father of the deceased in his deposition stated that his daughter after marriage never complained about the accused-appellant. D E

7. Learned counsel for the prosecution per contra relied upon the evidence and submitted that the ingredients necessary for the application of Section 304-B IPC were established beyond reasonable doubt. Therefore, the presumption under Section 113-B of the Indian Evidence Act arises and hence it is proved that the accused-appellant caused the dowry death. F

8. The admitted position in the present case is that the deceased was married with the accused-appellant on 22nd April, 1992. She died in the night intervening by 23rd/24th January, 1993. The cremation of the dead body was done in the morning of 24th January, 1993 without waiting for the parents of the deceased. Pritam Singh(PW-7) stated in his deposition G H

A that about about 12.00 noon, he was standing on the bus stand of Khizrabad and was talking with some people. Then he came to know that Santosh Kaur, daughter-in-law of Pritam Singh had died and was cremated. Then he told this fact to Nahar Singh(PW-2), father of the deceased who stayed in the Village
 B Kotian. On the next day, PW-2 alongwith Sucha Singh and other persons went to Village Mamliwala and verified the fact that Santosh Kaur had died and has also been cremated. The distance between the villages Mamliwala and Kotian was not so much and it was only about 17-18 kms. It was winter season;
 C month of January but it has not been made clear why the accused-appellant cremated the body of the deceased in the early morning of 24th January, 1993 without even calling the parents of the deceased which shows that there was something which the accused-appellant wanted to conceal.

D 9. As per statement of Nahar Singh(PW-2), Sukhbir Singh(PW-3) who were the father and the brother of the deceased, accused-appellant Rajinder Singh left deceased in her parents' house for about one month in December, 1992. PW-2 stated that her daughter-Santosh Kaur told him that her
 E father-in-law; Pritam singh, husband, Rajinder Singh, brother-in-laws; Gurvinder Singh and Surinder Singh and Madan Lal, brother-in-law of her husband were harassing her for bringing less dowry. She also told that they were demanding Rs. 25,000/- and told her to bring that amount when she came back
 F on Lohri. Nahar Singh(PW-2) was not in a position to meet the said demand at that stage. He assured his daughter that he would arrange some money and give her by the time she leaves back to her matrimonial house. On 15th January, 1993, his son
 G Sukhbir Singh took Santosh Kaur to her-in-laws house. He told him to make the accused understand that they would pay some money by 20th January, 1993 and they should not harass her. This fact was also informed to Sucha Singh, Sarpanch of the village. But the money could not be arranged by 20th January, 1993 and after about 3-4 days, i.e. on 24th January, 1993,
 H Pritam Singh (PW-7) came to PW-2 and told about the death

of Santosh Kaur whose death took place during the intervening night of 23rd/24th January, 1993. A

10. Sukhbir Singh (PW-3), brother of the deceased also corroborated the statements made by his father Nahar Singh(PW-2). He stated that the deceased told them that her husband Rajinder Singh, brother-in-laws; Gurvinder Singh and Surinder Singh, father-in-law; Pritam Singh and Madan Lal, brother-in-law of her husband were harassing her for not bringing sufficient dowry. He further told that they were demanding Rs.25,000/-. PW-3 then told her sister that they would pay the amount by 20th January, 1993. Then on 15th January, 1993 he took her sister to the house of her-in-laws and came back next day after telling his sister that the amount of 25,000 will be paid by 20th January, 1993. PW-3 further stated that the accused were harassing his sister even prior to 11th December, 1992. He also stated that on hearing about her death, he alongwith his father, Pritam Singh (PW-7), Sucha Singh, Sarpanch of the village, went to the village Mamliwala. They found the accused weeping and it was found that the dead body of his sister had already been cremated before they reached there. Then his father reported the matter to the police. B
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11. Pritam Singh(PW-7) stated that on 24th January, 1993 he came to Khizrabad to see his brother-in-law. At 12.00 noon while standing on the bus stand of Khizrabad, he heard some people talking that Pritam's Singh daughter-in-law Santosh Kaur died and had been cremated. Therefore, he told this fact to Nahar Sing(PW-2) at Kotian. Then on next day he came to the village Mamliwala alongwith 10 other persons where they came to know that Santosh Kaur had been cremated. Then all of them went to Police Station and lodged the report. F
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12. Nar Singh (PW-9), SHO, Police station Parakhpur, stated that on 25th January, 1993 he was posted as SI/SHO of Police Station, Chhachhrauli. On that day, complainant (PW-2) came to police station and lodged the FIR (Ex.P.B.). He recorded statement, inspected the spot and the place of H

- A occurrence and took into possession the clothes of the deceased vide memo (Ex.P.E.) which was stained with "vomiting and latrine". Clothes were sealed into a parcel with the seal of the 6-B.R., which was handed over to Sucha Singh (PW-4). Ex.P.E. was attested by Sucha Singh (PW-4) and
- B Sukhbir Singh (PW-3). Thereafter he went to the place of cremation and prepared the rough site plan of the cremation ground (Ex.P.M.). The ash and bones were taken into possession vide recovery memo (Ex.P.E.) which was also attested by PW-4 and PW-3. Statements of PW-3 and PW-4
- C were recorded (Ex.P.N.). He arrested the accused. The parcel of clothes and ash & bones were sent to forensic laboratory.

No contradiction could be found during the cross examination of prosecution witnesses.

- D 13. The accused in their examination under Section 313 Cr.P.C. admitted the factum of marriage but denied the allegation relating to demand of dowry. In reply to question no.
- E 14, accused-Rajinder Singh stated that his wife Santosh Kaur died a natural death on account of heavy vomiting and loose motions. He also stated that they neither demanded any dowry nor pressurized her to bring Rs.25,000/- from her father and that they were falsely implicated in the case.

- F 14. Admittedly, Santosh Kaur died in the intervening night of 23rd/24th January, 1993 and she was cremated in the early morning of 24th January, 1993. The distance between Village Mamliwala and Kotian was not much and it was just 17-18kms. It was the month of January and winter season, the necessity of the accused-appellant to cremate the dead body within few hours of death in the early morning of 24th January, 1993
- G without informing the parents of the Santosh Kaur has not been explained. The Police took into possession the ash and bones from the cremation ground and clothes of the deceased and sent the same to the Deputy Director-cum-Assistant Chemical Examiner to the Government of Haryana, F.S.L. Madhuban. As
- H per report an "Organo Phosphorus Pesticide" was detected on

the salwar stained with dirty brown material, one printed lady's shirt stained with dirty brown material and one green coloured woolen shawl of the deceased. As per report of F.S.L. (Ex P.L.1), the bones were found of the human being. Therefore, it is clear that Santosh Kaur died other than under normal circumstances. The accused-appellants have also failed to explain the presence of an "Organo Phosphorus Pesticide" in the vomiting of the deceased.

15. Section 106 of the Evidence Act does not relieve the burden of prosecution to prove guilt of the accused beyond reasonable doubt but where the prosecution has succeeded to prove the facts from which a reasonable inference can be drawn regarding the existence of certain other facts and the accused by virtue of special knowledge regarding such facts fail to offer any explanation then the Court can draw a different inference.

16. The ingredients necessary for application of Section 304-B IPC and the applicability of Section 113-B of the Evidence Act was discussed by this Court in *State of Rajasthan v. Jaggu Ram*, (2008)12 SCC 51. In the said case, this Court held as follows:

"11.The ingredients necessary for the application of Section 304-B IPC are:

1. that the death of a woman has been caused by burns or bodily injury or occurs otherwise than under normal circumstances;

2. that such death has been caused or has occurred within seven years of her marriage; and

3. that soon before her death the woman was subjected to cruelty or harassment by her husband or any relative of her husband in connection with any demand for dowry.

12. Section 113-B of the Evidence Act lays down that if soon before her death a woman is subjected to cruelty or

A harassment for, or in connection with any demand for
 dowry by the person who is accused of causing her death
 then the court shall presume that such person has caused
 the dowry death. The presumption under Section 113-B is
 a presumption of law and once the prosecution establishes
 B the essential ingredients mentioned therein it becomes the
 duty of the court to raise a presumption that the accused
 caused the dowry death.

C 13. A conjoint reading of Section 304-B IPC and Section
 113-B, Evidence Act shows that in order to prove the
 charge of dowry death, prosecution has to establish that
 the victim died within 7 years of marriage and she was
 subjected to cruelty or harassment soon before her death
 and such cruelty or harassment was for dowry. The
 expression "soon before her death" has not been defined
 D in either of the statutes. Therefore, in each case the court
 has to analyse the facts and circumstances leading to the
 death of the victim and decide whether there is any
 proximate connection between the demand of dowry, the
 act of cruelty or harassment and the death."

E 17. In the present case, the prosecution proved that the
 death of Santosh Kaur has occurred otherwise than under
 normal circumstances. Such death has occurred within a period
 of 9 months of her marriage i.e. much before seven years. The
 F statements of PW-2 and PW-3 are trust-worthy and they stated
 that Santosh Kaur was subjected to harassment by her
 husband and other accused relatives in connection with
 demand for dowry just prior to death. The prosecution having
 established essential ingredients, it becomes the duty of the
 G Court to raise a presumption that the accused caused dowry
 death.

H 18. In the present case, the accused has failed to explain
 as to why he was in a hurry to cremate the deceased in the
 early morning of 24th January, 1993 while she died in the mid
 night of 23rd/24th January, 1993 i.e. within few hours. The

village of deceased's parents was just 17-18kms far from the village of the accused but the reason as to why they were not informed about the incident on the same day and why the accused had not waited for them to come is not explained. The accused has also failed to explain as to why according to the F.S.L. Report, an Organo Phosphorus Pesticide was found in the vomiting of the deceased. Therefore, the Trial Court rightly drew an inference that the accused-appellants were guilty of the offence for which they were charge.

19. Hence, we find no merit in these appeals. These are accordingly, dismissed. Bail bonds of the appellants are cancelled. They shall surrender within a period of two weeks to undergo the remaining sentence.

R.P.

Appeals dismissed.