A BAKSHISH RAM & ANOTHER

v.

STATE OF PUNJAB

(Criminal Appeal No. 969 of 2009)

MARCH 12, 2013

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[P. SATHASIVAM AND JAGDISH SINGH KHEHAR, JJ.]

Penal Code, 1860 - s.304B - Dowry death - Conviction by courts below - On appeal, held: Prosecution failed to C *establish its case beyond reasonable doubt - Courts below committed an error in convicting the accused - Evidence Act, 1872 - s.113 B.*

Evidence Act, 1872 - s.60 - Oral evidence - Based on D *hearsay evidence - Admissibility - Held: Such oral evidence is not admissible.*

Appeal - Appellate jurisdiction of High Court - In criminal appeal - Held: As a first court of appeal, High Court should record its own findings after independent assessment of E *evidence.*

Appellants-accused Nos.1 and 2 alongwith accused No.3 were prosecuted u/ss. 304B and 498A IPC. Trial court convicted all the three accused and sentenced F **them to RI for 7 years. During pendency of the appeal before High Court, the appeal abated so far as A-3 is concerned due to his death. High Court confirmed the conviction and sentence of A-1 and A-2. Hence the present appeal.**

G **Allowing the appeal, the Court**

HELD: 1. The prosecution failed to establish its guilt beyond reasonable doubt and the trial Court and the High Court committed an error in convicting the

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appellants and the same are liable to be set aside. [Para 15] [[744-A-B]

2. The High Court, as a first Court of appeal, on facts must apply its independent mind and record its own findings on the basis of its own assessment of evidence. Mere reproduction of the assessment of trial court may not be sufficient and in the absence of independent assessment by the High Court, its ultimate decision cannot be sustained. [Para 10] [741-E]

Sakatar Singh and Ors. vs. State of Haryana **(2004) 11 SCC 291;** *Arun Kumar Sharma vs. State of Bihar* **(2010) 1 SCC 108: 2009 (14) SCR 1023 - relied on.**

3. PW-2, i.e. the mother of the deceased has not stated anything in her evidence with regard to harassment or mal-treatment of the deceased by the appellants on the basis of her personal knowledge rather admittedly her knowledge is hearsay since her whole narration in this regard in the court was based on whatsoever was stated to her by her husband. Under Section 60 of the Evidence Act hearsay evidence was not admissible as husband of PW2 was not examined before the court and no other witness was produced by the prosecution to prove about mal-treatment and harassment of the deceased by the appellants. Therefore, the ingredients of Section 304B IPC were not met by the prosecution for holding the appellants guilty under the said offence. Even otherwise, since the demands made by the appellants were met by the parents of the deceased, there was no reason for the appellants to set the deceased on fire. Even the other witness, i.e. PW-3 who was a resident of the village nowhere stated in his deposition before the Court with regard to any mal-treatment to the deceased or being aware of any such incident. Hence, his evidence is not helpful insofar as the allegation of harassment and mal-treatment is concerned.

A The prosecution has not pressed into service any other witness to prove the demand of dowry, harassment and mal-treatment. [Para 9] [740-G-H; 741-A-D]

4. A perusal of Section 113B of the Evidence Act and
B Section 304B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. In other words, the prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of
C the "death occurring otherwise than in normal circumstances". The prosecution is obliged to show that soon before the occurrence, there was cruelty or harassment and only in that case presumption operates. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental
D equilibrium of the woman concerned, it would be of no consequence. In the instant case, the prosecution heavily relied on the only evidence of PW-2- mother of the deceased which is a hearsay, in any event, a very general and vague statement which is not sufficient to attract the
E above provisions. In such circumstances, accidental death cannot be ruled out. It is also relevant that it was appellant No.1-husband of the deceased who took the deceased to the hospital and it was he who informed the police as well as parents of the deceased. He also did not
F make any attempt to run away from the place of occurrence. [Paras 13 and 14] [743-C-H]

Srinivasulu vs. State of A.P. (2007) 12 SCC 443: 2007 (9) SCR 842 - relied on.

G Case Law Reference:

(2004) 11 SCC 291	relied on	Para 10
2009 (14) SCR 1023	relied on	Para 11
H 2007 (9) SCR 842	relied on	Para 12

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 969 of 2009 A

From the Judgment & Order dated 26.03.2008 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 487-SB of 1994. B

Satinder Singh Gulati, Kamaldeep Gulati for the Appellants.

V. Madhukar, AAG, Srajita Mathur, Kuldip Singh for the Respondent. C

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. This appeal has been filed against the judgment and order dated 26.03.2008 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal D No. 487-SB of 1994 whereby the learned Single Judge of the High Court dismissed the appeal filed by the appellants herein and confirmed the judgment and order dated 21.09.1994 passed by the Additional Sessions Judge, Jalandhar convicting the appellants herein under Sections 304B and 498A of the E Indian Penal Code, 1860 (hereinafter referred to as "IPC") and sentencing them to undergo rigorous imprisonment for seven years.

2. **Brief facts:** F

(a) The marriage between Surinder Kaur (deceased) and Bakshish Ram - appellant No.1 (A-1), was solemnized 1½ years prior to the date of occurrence. Appellant No.2 (A-3) is the mother-in-law of the deceased and mother of A-1. Khushia Ram (A-2), is the father-in-law of the deceased and father of G A-1, who died during the pendency of the appeal in the High Court.

(b) As per the prosecution case, on 06.07.1992, Bikkar Ram (since deceased) - the father of Surinder Kaur (deceased) H

went to meet her daughter at her matrimonial home where she informed him about the harassment and mal-treatment meted out by her huband - Bakshish Ram (Appellant No.1 herein), her father-in-law, Khushia Ram (since deceased) and her mother-in-law Dalip Kaur (Appellant No.2 herein). She also informed him that her in-laws were pressurizing her to bring more money from her parents as they wanted to purchase a Cooler. It was alleged by Bikkar Ram that about four months before the incident, the deceased was sent to her parents house to bring money for purchasing a Cooler and he gave her Rs.800/- for the same, which he borrowed from one Sarwan Singh, who was a resident of his village. Again, on being asked by her, he gave two electronic Harmoniums, which were brought by the brother of the deceased from abroad.

(c) On the next day, i.e.,on 07.07.1992, at about 10.30 p.m., one Parminder Singh informed Bikkar Ram that his daughter has been set on fire by her in-laws and she has been admitted to Civil Hospital, Nawanshahar. On hearing this, he along with his wife Sibo (PW-2) rushed to the Civil Hospital where they found that their daughter was completely burnt. On being enquired, he was informed by the villagers that her daughter was set on fire by her in-laws by pouring kerosene oil. He gave a statement before the police narrating the incident. Based on his statement, a case under Section 304-B read with Section 34 of IPC was registered against Bakshish Ram - the husband, Khushia Ram - father-in-law and Dalip Kaur - mother-in-law of the deceased at Police Station, Banga. After the investigation, the case was committed to the Court of Additional Sessions Judge, Jalandhar.

(d) The Additional Sessions Judge, by order dated 21.09.1994, by amending the charges convicted all the three accused persons for having committed an offence punishable under Sections 304B and 498-A IPC and sentenced them to undergo rigorous imprisonment for 7 years.

(e) Aggrieved by the said judgment, all the three accused

filed an appeal being Criminal Appeal No. 487-SB of 1994 before the High Court of Punjab and Haryana. During the pendency of the appeal, Khushia Ram (A-2), died on 21.07.2006 and therefore, the proceedings against him were dropped. By impugned order dated 26.03.2008, the High Court dismissed the appeal filed by the present appellants.

(f) Challenging the said judgment and order, the appellants have preferred this appeal by way of special leave.

3. Heard Mr. Satinder Singh Gulati, learned counsel for the appellants-accused and Mr. V. Madhukar, learned Additional Advocate General for the respondent-State.

4. The only point for consideration in this appeal is whether the prosecution has established its case against the appellants-accused beyond reasonable doubt and the Courts below are justified in convicting them under Sections 304B and 498A IPC and sentencing them to undergo rigorous imprisonment for seven years?

Discussion:

5. Admittedly the marriage between Surinder Kaur (deceased) and Bakshish Ram (appellant No.1-accused) was solemnized 1½ years prior to the date of occurrence. The evidence of Sibo (PW-2), the mother of the deceased and Jeet Ram (PW-3), resident of village Soutran show that in these 1 ½ years no incident of cruelty, mal-treatment and harassment relating to the dowry was alleged against the appellants except the incident of just one day prior to the date of occurrence. The star witness relied on by the prosecution is Sibo (PW-2), who is none else than the mother of the deceased. In her evidence, she stated that her daughter Surinder Kaur (deceased) was married to Bakshish Ram (appellant No.1) about 1 ½ years prior to her death. She further explained that one day prior to the occurrence, her husband - Bikkar Ram had gone to the house of her daughter. Actual statement of Sibo (PW-2) with

A reference to cruelty, mal-treatment and harassment is as follows:

> ".....he told me that our daughter Surinder Kaur was being harassed and mal-treated by the accused for bringing less dowry. About 15 days before her death my daughter Surinder Kaur with her husband Bakshish Ram had come to our house and she was asking for the harmonium which her brother had brought from the foreign country. Both these harmoniums were given to her on her asking. My daughter had also asked me to supply a cooler to her. She was making these demands on the asking of her husband and mother-in-law and father-in-law accused. We did not deliver the cooler but we borrowed a sum of Rs.800/- from Sarwan Singh of our village and gave that amount to my daughter."

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6. Mr. Satinder Singh Gulati, learned counsel for the appellants has pointed out that the first part of the evidence of PW-2 relates to hearsay, namely, that she deposed what her husband - Bikkar Ram informed her and the rest of the portion is a general and vague statement. It is true that first part of her statement clearly shows that she had no personal knowledge, information or appraisal from her daughter but she heard the alleged harassment and mal-treatment for bringing less dowry from her husband - Bikkar Ram. Admittedly on the date of the evidence, Bikkar Ram was not available since he died before recording of the evidence. As per Section 60 of the Indian Evidence Act, 1872 (in short "Evidence Act"), oral evidence must be direct if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it. We have already extracted the actual statement of Sibo (PW-2) in which she admitted that she heard the above allegation from her husband and the same could not be corroborated. At the most her statement is only hearsay and in the absence of any other material in the form of corroboration, conviction cannot be sustained solely on this evidence.

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7. It is but natural that being the mother of the deceased if she had come across any such harassment or ill-treatment, she could have explained the same in her evidence. Admittedly, she had neither asserted nor narrated any complaint from her daughter about harassment or ill-treatment by the appellants. In the later part of her statement, Sibo (PW-2) has stated that the deceased with her husband came to their house 15 days prior to the date of incident and when she asked for the Harmoniums which her brother had brought from abroad, she gave both the Harmoniums to her which shows that the demand made by her daughter had been complied with. It is further seen from the evidence of PW-2 that her daughter had also asked for money for purchasing cooler on being pressurized by her in-laws. For meeting this demand, PW-2 had stated that she borrowed a sum of Rs.800/- from Sarwan Singh of their village and gave the same to her daughter. By this, as rightly pointed out by learned counsel for the appellants, the demands made by the appellants were met by the parents of the deceased, therefore, there was no reason for them to set the deceased on fire.

8. In order to appreciate the only evidence of Sibo (PW-2), it is useful to refer the definition of "Dowry death" under Section 304B of IPC which reads as under:

> **"304B Dowry death** - (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.
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> Explanation - For the purpose of this sub-section, "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

A (2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

A perusal of Section 304B clearly shows that if a married woman dies otherwise than under normal circumstances within B seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband in connection with any demand for dowry, such death shall be called "dowry death" and such husband or relative shall be deemed to have caused C the death. The conditions precedent for establishing an offence under this section are:

(a) that a married woman had died otherwise than under normal circumstances;

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(b) such death was within seven years of her marriage; and

(c) the prosecution has established that there was cruelty and harassment in connection with demand E for dowry soon before her death.

This section will apply whenever the occurrence of death is preceded by cruelty or harassment by husband or in-laws for dowry and death occurs in unnatural circumstances. The F intention behind the section is to fasten guilt on the husband or in-laws though they did not in fact caused the death.

9. We have already extracted and analyzed the statement of Sibo (PW-2), the mother of the deceased and we are satisfied that she has not stated anything in her evidence with G regard to harassment or mal-treatment of the deceased by the appellants on the basis of her personal knowledge rather admittedly her knowledge is hearsay since her whole narration in this regard in the Court is based on whatsoever was stated to her by her husband - Bikkar Ram. We have already stated H that under Section 60 of the Evidence Act hearsay evidence

is not admissible as Bikkar Ram was not examined before the Court and no other witness was produced by the prosecution to prove about mal-treatment and harassment of the deceased by the appellants. Therefore, the ingredients of Section 304B IPC were not met by the prosecution for holding the appellants guilty under the said offence. Even otherwise, since the demands made by the appellants were met by the parents of the deceased, there was no reason for the appellants to set the deceased on fire. Even the other witness, namely, Jeet Ram (PW-3), a resident of Soutran has nowhere stated in his deposition before the Court with regard to any mal-treatment to the deceased or being aware of any such incident. Hence, his evidence is not helpful insofar as the allegation of harassment and mal-treatment is concerned. Admittedly, except the abovementioned witnesses, the prosecution has not pressed into service any other witness to prove the demand of dowry, harassment and mal-treatment.

10. The High Court, as a first Court of appeal, on facts must apply its independent mind and record its own findings on the basis of its own assessment of evidence. Mere reproduction of the assessment of trial Court may not be sufficient and in the absence of independent assessment by the High Court, its ultimate decision cannot be sustained. The same view has been reiterated by this Court in *Sakatar Singh & Ors. vs. State of Haryana*, (2004) 11 SCC 291.

11. In *Arun Kumar Sharma vs. State of Bihar,* (2010) 1 SCC 108, while reiterating the above view, this Court held that in its appellate jurisdiction all the facts were open to the High Court and, therefore, the High Court was expected to go deep into the evidence and, more particularly, the record as also the proved documents. Contrary to the above principle, we are satisfied that in the case on hand, the High Court failed to delve deep into the record of the case and the evidence of the witnesses. The role of the appellate Court in a criminal appeal is extremely important and all the questions of fact are open before the appellate Court. The said recourse has not been

A adopted by the High Court while confirming the judgment of the trial Court.

12. We have already noted Section 304B IPC and its essential ingredients. Section 113B of the Evidence Act is also
B relevant for the case in hand. Both Sections 304B and 113B of the Evidence Act were inserted by Dowry Prohibition (Amendment) Act 43 of 1986 with a view to compact the increasing menace of dowry deaths. Section 113B of the Evidence Act reads as under:

C **"113B. Presumption as to dowry death.-** When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any
D demand for dowry, the Court shall presume that such person had caused the dowry death."

Explanation.- For the purposes of this section, "dowry death" shall have the same meaning as in section 304B
E of the Indian Penal Code (45 of 1860)"

As per the definition of "dowry death" in Section 304B IPC and the wording in the presumptive Section 113B of the Evidence Act, one of the essential ingredients amongst others, in both the provisions is that the woman concerned must have been
F 'soon before her death' subjected to cruelty or harassment "for or in connection with the demand for dowry". While considering these provisions, this Court in *M. Srinivasulu vs. State of A.P.,* (2007) 12 SCC 443 has observed thus:

G "... The presumption shall be raised only on proof of the following essentials:

(1) The question before the court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the
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accused is being tried for the offence under Section 304-B IPC.)

(2) The woman was subjected to cruelty or harassment by her husband or his relatives.

(3) Such cruelty or harassment was for, or in connection with any demand for dowry.

(4) Such cruelty or harassment was soon before her death."

13. As discussed above, a perusal of Section 113B of the Evidence Act and Section 304B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. In other words, the prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the "death occurring otherwise than in normal circumstances". The prosecution is obliged to show that soon before the occurrence, there was cruelty or harassment and only in that case presumption operates. As observed earlier, if the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence. In the case on hand, admittedly, the prosecution heavily relied on the only evidence of Sibo (PW-2) - mother of the deceased which, according to us, is a hearsay, in any event, a very general and vague statement which is not sufficient to attract the above provisions. In such circumstances, as argued by the learned counsel for the appellants, accidental death cannot be ruled out.

14. Another relevant aspect to be noted is that it was appellant No.1-husband of the deceased who took the deceased to the hospital and it was he who informed the police as well as parents of the deceased. It is also brought to our notice that he did not make any attempt to run away from the place of occurrence.

A 15. In view of the above discussion, we are satisfied that the prosecution failed to establish its guilt beyond reasonable doubt and the trial Court and the High Court committed an error in convicting the appellants and the same are liable to be set aside. Since appellant No.1 has already served out the period
B of sentence of 7 years, no further direction is required. However, since appellant No.2 is on bail, her bail bonds shall stand discharged. The appeal is allowed.

K.K.T. Appeal allowed.