

CASE NO.:
Appeal (crl.) 639 of 1998

PETITIONER:
State of Rajasthan

RESPONDENT:
Teg Bahadur & Ors.

DATE OF JUDGMENT: 29/09/2004

BENCH:
K.G. Balakrishnan & Dr. AR. Lakshmanan

JUDGMENT:
J U D G M E N T

Dr. AR. Lakshmanan, J.

This appeal is directed against the final judgment and order dated 14.03.1997 passed by the High Court of Rajasthan at Jaipur in S.B. Criminal Appeal No. 487 of 1996 whereby the High Court allowing the appeal held that the evidence adduced by the prosecution is not reliable and on the basis of such weak and unreliable evidence, the guilt of the respondents-accused cannot be proved successfully.

The short facts giving rise to the appeal are as follows:

On 05.05.1993, the deceased Suman aged 18 years was married to the respondent-accused Teg Bahadur in accordance with Hindu rites and ceremonies. After the Gauna ceremony was completed, deceased Suman was sent back to her maternal house by her in-laws and she complained to her parents that she had been sent back because she had not brought enough dowry with her. She also told them that she had been threatened not to return if she was unable to bring a Television, Cooler and money. However, after lot of discussions and negotiations with her in-laws, Suman was taken back by her in-laws. But the demand for dowry still persisted and within five months that Suman stayed in her maternal house, she was sent back to her matrimonial house three/four times and threatened to bring new dowry items every time. According to the prosecution, she was harassed, tormented and tortured by her in-laws, husband and other relatives and physically abused for bringing insufficient dowry in her marriage.

On 09.09.1994, at about 10.30 p.m. death of the deceased Suman took place in mysterious circumstances in the intervening night without assigning any logical or cogent reasons for her demise. Even before sunrise, the cremation ceremony was performed in a hasty manner without the parents of the deceased Suman being duly informed about the death of their daughter.

On 11.09.1994, the information about the death of their daughter Suman was received by the father of the deceased - Om Prakash PW-13 from their relative Chunilal PW-8, who was residing in Garhwalon Ki Dhani. Upon receiving this information, Om Prakash and Ganpat Ram left for the house of Ghanshyam i.e. grandfather of the respondent-accused, who told them that their daughter Suman died due to Haiza. But upon asking the neighbours they gathered altogether different information that their daughter had been killed mercilessly, being thrown in the well. An F.I.R. was lodged on 13.09.1994 by the father of the deceased - Om Prakash who was accompanied by a number of villagers. On the basis of the written report, F.I.R. was lodged and a case was registered under Sections 498-A, 302 and 202 I.P.C. The Investigation Officer PW-24 reached the place of incident and prepared the site plan of the well Ex.P-1 in the presence of witnesses - Radheyshyam and Lichman Ram. Rameshwar was made to go down the well from which one gold ear-ring, glass/lak bangle pieces and a metal clip was recovered and sealed then and there. The mud on the motor installed in the well was also taken along with the mud which was stuck on the sides of the well was also scraped and sealed and marked as Ex.P-4. Thereafter, the site plan of the place

of incident was prepared and samples of plain earth and suspicious mud from the residential house of the respondent-accused were taken and sealed. In the presence of the witnesses, the remains of ashes and bones belonging to the deceased Suman were collected from the cremation place and sealed them there. During investigation, the statements of various witnesses were recorded under Section 161 Cr.P.C. Upon completion of investigation, charge sheet was filed against the respondents-accused Teg Bahadur, Ghanshyam and Smt. Singari under Sections 304-B, 498-A and 201 I.P.C. in the Court of Addl. Chief Judicial Magistrate, Navalgarh. On committal for trial, it was numbered as Sessions Case No. 7 of 1995.

The prosecution examined as many as 24 witnesses to prove their case. No witness was examined by the Defence side. Out of 24 witnesses, 8 of them have turned hostile. Relying upon the facts and circumstances and the evidence adduced on record, the learned Sessions Judge, Jhunjhunu held the respondents-accused guilty under Sections 498-A, 304-B, 201 I.P.C. and were sentenced to 8 years of rigorous imprisonment. However, no sentence was passed separately for the offence committed by them under Section 498-A.

Aggrieved against the judgment and order passed by the learned Sessions Judge, the respondents-accused filed S.B. Criminal Appeal No. 487 of 1996 in the High Court of Rajasthan at Jaipur. Final judgment and order was passed by the High Court while allowing the appeal filed by the respondents herein. The High Court held that the evidence adduced by the prosecution is not reliable and on the basis of such weak and unreliable evidence, the guilt of the accused cannot be proved successfully.

Aggrieved against the final judgment and order passed by the High Court, the State of Rajasthan has filed the above appeal in this Court.

We heard Ms. Madhurima Tatia, learned counsel for the appellant and Mr. M.L. Lahoty, learned counsel for the respondent. We have perused the records and also of the judgments of both the Sessions Court and of the High Court and heard lengthy arguments advanced by the counsel appearing on either side.

Ms. Madhurima Tatia, learned counsel appearing for the appellant submitted that the High Court has erred in acquitting the respondents-accused even when the facts and circumstances which were proved beyond reasonable doubt and the evidence adduced on record clearly proves the guilt of all the respondents-accused that in all probabilities the respondents-accused had caused the death of the 18 year old deceased Suman. She further submitted that the High Court is not correct in not appreciating the testimonies of PW-13 - Om Prakash and PW-4 - Ram Kishan who have clearly stated in their statements the entire chronology of events, which led to the death of the deceased. According to the learned counsel for the appellant, such clear and lucid statement of facts, which were proved beyond reasonable doubt should not have been overlooked and ignored by the High Court even when their testimonies clearly corroborate the evidence adduced by the prosecution and has successfully proved the guilt of the accused. The counsel for the appellant contended that all the ingredients of offence under Section 304B were made out and it was urged that there was sufficient evidence to hold that before the death of Suman there was demand for dowry by the appellant and there was consequential harassment on his part. Counsel also urged that the presumption under Section 113-B of the Evidence Act should have been drawn and the High Court seriously erred in acquitting the accused without properly appreciating the evidence.

In view of these submissions, the learned counsel for the appellant submitted that the High Court has erred in acquitting the accused even when the chain of circumstances was complete which clearly point out towards the guilt of the respondents-accused. Winding up her arguments, the learned counsel submitted that the cremation of the body of the deceased Suman was cremated in the hasty manner without even informing the parents of the deceased. Learned counsel for the appellant prayed that the appeal against the final judgment of the High Court be set aside and the judgment of the Sessions Court be restored.

Per contra, Mr. M.L. Lahoty, learned counsel for the respondents-accused submitted that the information regarding the death of Suman was given to her family members who were present at the time of cremation and though many neighbours were

examined, none of them supported the case of the prosecution. He further submitted that the alleged recovery of one golden ear-ring, pieces of bangles and hair clip has not been proved as those of the deceased-Suman. With regard to the demand of dowry, the important witness is the mother of deceased, Smt. Hira Bai, PW-22 but she also has not supported the case of the prosecution. Learned counsel for the accused took us through the evidence of the witnesses and submitted that the death of Suman was not for the reasons, as alleged by the prosecution and, therefore, the High Court has rightly allowed the appeal filed by the accused-respondents herein.

In the instant case, the prosecution has examined as many as 24 witnesses. In these, the father of the deceased, Suman, PW-13, Om Prakash, grand-father of PW-5, Ganpat and mother of the deceased, Smt. Hira Bai, PW-22, PW-2, Lachhman and PW-3, Radhey Shyam were examined. PW-6, PW-7, PW-14, PW-15 and PW-16 were declared hostile. The accused \026 Teg Bahadur, in his statement under Section 313 of the Criminal Procedure Code, stated that his marriage with Suman was solemnised without dowry and even after marriage, there was no demand for dowry and that they were living happily together and that a false case has been lodged against him. The accused-Ghanshyam, stated in his statement that Teg Bahadur is his grand son whose marriage was solemnised without dowry and there was no demand of dowry. It is also in the evidence that at the time of death of Suman, as spoken to by PW-18, Chunnilal, that Suman's father, mother, grand-father came to the funeral ceremony of Suman at Ghanshyam's house at Meelo Ki Dhani. The said witness has also stated that there was no dispute of dowry.

The learned Sessions Judge, on the basis of the evidence produced, held that Suman died on 9/10 September, 1994 in unnatural circumstances and that she had died due to fall in well and that the death of Suman took place within seven years from the date of marriage and, therefore, under Section 113-B of the Evidence Act, presumption could be made against the accused person and that prior to cremation, the parents of the Suman and other members of the family were not informed and that the cremation was done in undue haste. Learned Sessions Judge, in our opinion, is not correct in holding so. The finding of the learned Sessions Judge is contrary to the evidence led in this case.

This apart, there is also discrepancy in regard to the statement of reports in the police station. It is seen that two reports were submitted by Om Prakash, one report is Ex. P-10 and other report has not been produced. Likewise, PW-12, Mukhram, has stated in his statement that report was given in the police station on 13th which was written by Bhagwan Singh, whereas Om Prakash himself has stated that Bhagwan Singh has written the report. Therefore, it is seen that Ex.P-10 is not the first report and the other report filed prior to Ex.P-10 was removed and afterwards second report was filed.

In brief, for proving the offence under Section 304-B of the Indian Penal Code, the prosecution has to prove the following things:

- a) The death of the married woman was within seven years of the marriage.
- b) A little prior to death, her husband or relative on the point of demand of dowry subjected cruelty to her or harassed her.

In the present case, it is proved that Suman was married on 5.5.1993 and she died on 10.9.1994. Thus Suman's death took place within seven years of her marriage.

In regard to the cause of death, there are two versions. According to the prosecution, the death was due to falling in well whereas according to the accused, Suman died due to Plague. However, the facts stated by Om Prakash, PW-13, in FIR, Ex.P-10, are otherwise. From the evidence, it is not known whether Suman died during the day time or in the night. PW-8, Ramlal, has stated in his statement that the wife of Teg Bahadur had died due to vomiting and loose motions and no voice of beating was heard. Therefore, this witness was declared hostile. Likewise, Radheyshyam and Ramlal, as mentioned in the First Information Report, told Om Prakash that in the night in the house of Ghanshyam they heard the cries of woman weeping and this fact has not been proved. PW-2, Lachhman, was declared hostile since he has not supported the case of the prosecution. He, in his statement, has

stated that the father of Teg Bahadur has taken the thick rope and also stated that the air of Motor of well is to be taken out. Out of the women mentioned in the First Information Report, the statements of PW-6, Manbhari, PW-7, Smt. Mani, PW-14, Smt. Manohari, PW-15, Smt. Parmeshwari, PW-16, Smt. Barji and PW-19, Suman was available. All these witnesses have been declared hostile because they have not supported the prosecution case and the facts mentioned in Ex.P-10 that when they got bath to Suman before cremation, no injuries were seen. Likewise, there is no evidence in regard to the recovery from the well of Suman's ear-rings, pieces of bangles and hair clip and that these articles found at the well at the time of search were of Suman. There was no evidence to that effect. The Investigating Officer, in our view, has not given any attention to this and had not investigated regarding this. As already noticed, Om Prakash, PW-13, Ganpat, Ramkishan and Shri Ram had stated that they have no information about the death and that no information was given to the family members of Suman and that they have denied to have participated in the cremation. Whereas the other persons of the village, whose statements the prosecution has produced, had stated the presence of the parents of Suman at the time of cremation, as to be seen from the statements of Manbhari, Smt. Mani, Ram Lal, Kushal Singh, Smt. Manohari, Smt. Parmeshwari, Smt. Barji, Smt. Suman and Chunnilal. PW-18, Chunnilal had also accepted, in cross-examination, that on his telling, Om Prakash, father of Suman, and the mother of Suman had come for cremation of Suman in the house of Ghanshyam in Milon Ki Dadhi. As already noticed, for proving an offence under Section 304-B of the Indian Penal Code, it is necessary that the prosecution should prove this that a little prior to death on the issue of demand of dowry, her husband or the relatives of her husband have subjected cruelty with her.

Our attention was drawn to Section 113-B of the Evidence Act and Section 304-B of the Indian Penal Code by the learned counsel appearing for the accused. A conjoint reading of Section 113-B of the Indian Evidence Act and Section 304-B of the Indian Penal Code shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of

"death occurring otherwise than in normal circumstances." For the above proposition, learned counsel appearing for the accused, cited the judgment of this Court in the case of Hira Lal & Ors. vs. State(Govt.of NCT), Delhi, (2003) 8 SCC 80. In that case this Court observed thus:

"The expression "soon before" is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by the prosecution. "Soon before" is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. The expression "soon before her death" used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression "soon before" is not defined. A reference to the expression "soon before" used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a Court may presume that a man who is in the possession of goods "soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for their possession". The determination of the period which can come within the term "soon before" is left to be determined by the Courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. 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."

With regard to the dowry, there are different versions. PW-1, Sanwarmal stated that he had not heard anything about the dowry with the wife of Teg Bahadur. PW-2, Lachhman stated that he does not know this that from Suman, her in-laws have asked for dowry or not. PW-4, Ram Kishan stated, in cross examination, that at the time of marriage, the accused persons have not raised any objection regarding dowry. The statement of this witness is contrary to the statement of Om Prakash. According to Ram Kishan, when Suman came back for the first time from her in-laws then she complained regarding dowry whereas Om Prakash and Hira Bai had not stated so. PW-5, Ganpat, uncle of Om Prakash, in his statement, stated that at the time of marriage on the issue of dowry Teg Bahadur and Ghanshyam raised the dispute. PW-9, Shriram, stated that no dowry was demanded at the time of marriage but afterwards dowry was demanded. PW-10, Kushal singh, stated that at the time of marriage on the point of dowry displeasure was shown.

On the careful scrutiny of the statements of the aforesaid witnesses, it is seen that witnesses have given different statements regarding demand of dowry. According to him, with respect to dowry, dispute was raised at the time of marriage. According to Om Prakash, when Suman returned to her parents' house, she complained about demand of dowry by the in-laws. There is no corroboration about the statement of Om Prakash by the statement of his wife Smt. Hira Bai. Under these circumstances, we are of the opinion, that there is lack of evidence to prove the demand of dowry and that the evidence led by the prosecution bristle with discrepancies and contradictions. On the basis of the evidence, it could not be treated to have been proved that actually the accused had made a demand of dowry and that was made soon before the death and due to this, the deceased was harassed.

In the instant case, the witnesses having given the statements about the facts within their special knowledge, under Section 161 of the Criminal Procedure Code recorded during investigation, have resiled from correctness of the versions in the statements. They have not given any reason as to why the investigating officer could record statements contrary to what they had disclosed. It is equally settled law that the evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused, but it can be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted.

The prosecution relied upon the recovery of ear-rings, hair clip, pieces of bangles belonging to the deceased from the well upon the disclosure statement made by police. It may stated that these are articles of common use and can be found out in any house. That apart, no family member of the deceased has identified these articles or claimed that the same belonged to the deceased and/or she was wearing the same at the time of occurrence.

In the instant case, one of the main ingredients of the offence of demand of dowry being absent, the High Court is right in acquitting the accused for the offence under Section 304-B of the Indian Penal Code.

A reading of the judgment of the trial Court clearly shows that the Sessions Judge proceeded as if the prosecution is available against the accused merely because an allegation of death within seven years of marriage was made without even the prosecution having proved the required preliminary fact. Having so shifted the onus, the Court then proceeded to hold that the accused had not discharged the said onus and hence convicted the accused primarily based on the presumption under Section 113-B of the Evidence Act. The approach by the Sessions Court is not correct.

In this view of the matter, we are of the opinion that the prosecution has failed to prove the circumstances alleged against the accused persons. The High Court, in our opinion, has not committed any error in interfering with the conviction of the accused passed by the Sessions Court.

The appeal, therefore, fails and stands dismissed.