

PETITIONER:
BALDEV KRISHAN

Vs.

RESPONDENT:
THE STATE OF HARYANA

DATE OF JUDGMENT: 28/01/1997

BENCH:
FAIZAN UDDIN, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.P. KURDUKAR, J.

Smt. Pratibha (since deceased) was the daughter of Kamal Goyal (PW 2) a resident of Sangrur. She was married to Ravi Kumar (A-3) on February 19, 1981. It was an arranged marriage. Kamal Goyal comes from a middle class family and is in service with limited source of income. At the proposal stage Kamal Goyal alleged to have made it clear that having regard to his means the marriage would be a simple one. He claimed to have spent on marriage of pratibha an amount of Rs. 70,000/-. ravi Kumar (A-3) and Narinder Kumar (A-4) who has been acquitted are the sons of Baldev Krishan (A-1). Sarla Devi (S-2) is the wife of A-1. They are the residents of Jullundur city, owning a ground floor and one stormy house. On the ground floor they run business in electric goods under the name of B.K. Electrical Industry; whereas the first floor is used for their residence. It is a joint Hindu family. Baldev Krishan being a businessman was then having comparatively a better financial position.

2. Smt. pratibha after her marriage came to Jullundur and resided with her husband and in laws. In the last week of February, 1981, Kamal Goyal came to Jullundur and took away Smt. Pratibha to Sangrur. Pratibha told her father that her in-laws were of a very greedy nature and were criticising her on dowry issue. On the following day on reaching Sangrur A-3 sent a telephonic message to Kamal Goyal that his mother was taken ill and Pratibha would return within a short period. Accordingly, she was brought back to Jullundur. After about two or three months. Pratibha again came to Sangrur and told her father that all the accused persons were taunting her for having brought nothing in dowry and that the clothes brought by her in dowry were mere rags and even other articles were not given worth to their use. It is alleged that Pratibha used to explain to her in-laws that her father came from an ordinary family and whatever he could give in dowry had been given and there was no point in criticising her parents. It is common premise that Rekha Rani (PW 1) who happened to be her aunt was residing at Jullundur and as and when Pratibha met her she used to convey as to how she was illtreated by the accused. Upon

hearing the distressing remarks made by the accused, the father used to advise Pratibha not to take the remarks of her in-laws seriously and things would be settled down after passage of time. Pratibha used to tell her parents that her husband (A-3) and mother-in-law (A-2) used to tease her on her squint. It may be stated that Pratibha was blessed with a son on December 24, 1981, at her parents' house and this event was celebrated by her father by inviting members of her in-laws family and spent about Rs. 7,000/- on customary gifts (Shushak). It is then alleged by the prosecution that on June 2, 1981 which was a Nirjala Ekadasi day, Smt. Rekha Rani (PW 1) and her husband Vijay Kumar (PW 5) went to the house of the accused for giving her presents. Rekha Rani wished Pratibha but, however, she was found to be depressed. At that time A-2 told Rekha Rani that she should have searched a boy having a squint as a better match for Pratibha having a status commensurate with a girl. A-2 also taunted saying that they accepted the proposal as Kamal Goyal was a gentleman but he had given rages in dowry. A-2 also alleged to have remarked that Kamal Goyal was a scoundrel and would learn a lesson when he would marry his other children. He must find out only scoundrels. Rekha Rani thereafter came to an adjoining courtyard where A-3 was sitting with a view to have to talk to him and convey the remarks may by A-2. Sarla Devi (A-2) thereafter followed her whereupon A-3 told his mother to keep quiet and should not talk nonsense. A-2 thereupon stated that she would set right Pratibha as God has given her a lot of money. A-2 also then passed remarks saying that some other proposals had come for. A-3 offering dowry of two lakhs. After hearing these remarks of A-2 Rekha Rani returned to her room.

3. It is then alleged by the prosecution that on June 5, 1982 Kamal Goyal came to Jullundur for taking Smt. Pratibha to Amritsar where his mother-in-law was ailing. He also intimated to A-1 that he would be taking Smt. Pratibha on June 6, 1992 to Sangrur as the marriage of his brother (Kamal Goyal's brother) was to take place on June 20, 1982 at Delhi. Accordingly on 5th June, 1992 Kamal Goyal came to the house of Accused whereupon A-1 and A-3 told him that Pratibha would accompany him. Kamal Goyal then went to the house of Rekha Rani who told him that Pratibha was not happy as the members of her in-laws family were taunting her on various grounds including a squint in the eye. At about 3.00 p.m. Kamal Goyal went to the house of A-1 and he was told by A-1 and A-3 that Pratibha would not accompany him. Kamal Goyal wanted to sort out the differences and, therefore, he along with A-1 and A-3 went to the drawing room on upstairs. A-2 and Pratibha also came there and it was found that the latter was very much disturbed. Pratibha told her father that all the accused were ill-treating her and calling her and him as bastards. Kamal Goyal according to the prosecution told the accused that he belonged to a cultured family and requested not to abuse. Sarla (A-2) then told him that because of this matrimonial relation and of meagre gifts of a poor quality their status in the society was lowered down. It is alleged by the prosecution that A-2 complained to Kamal Goyal that Pratibha had no desire to work in the house and was a burden to the family. Accused persons then told Kamal Goyal that Pratibha would not accompany him.

4. Despite the protest Kamal Goyal requested the accused to send Pratibha to Sangrur with him at about 3.00 p.m. on the following day. Kamal Goyal accordingly went to the house of the accused on June 6, 1982. Pratibha was getting ready to accompany him but after some time she came with tears in

her eyes and told him that she would not accompany him. Kamal Goyal found her very much frightened and perplexed and wanted to know from her the reasons therefor but she refused to say anything at that time. Kamal Goyal then asked Baldev Krishan (A-1) as to what was happening in the house and who had threatened Pratibha whereupon he told him not to worry and he would take every precaution and responsibility of her safe stay in the house. A-2 then told Kamal Goyal that Pratibha would come directly to Delhi on June 18, 1982 or she would be sent to Sangrur either on 21th or 13th June, 1982. With great disappointment Kamal Goyal returned to Sangrur and since he was worried about Pratibha's well being, wrote a letter Ex. PB to Vijay Kumar (PW 5) and sent another to A-1 on June 7, 1982. Smt. Janak, the mother of Pratibha also wrote a few lines on Ex. PB to Smt. Rekha Rani. It is alleged by the prosecution that relations between Pratibha and members of her in-laws family instead of improving worsened and ultimately on June 8, 1992, she died of burn injuries in her matrimonial house.

5. Coming to the eventful afternoon of June 8, 1982 at about 6.30 p.m. Raj Kumar (PW 4) happened to pass in front of the shop of A-1 and saw many persons gathered there. People were taking that accused persons had burnt their daughter-in-law on account of their greed for dowry. He noticed that the accused persons were very much perturbed. He then went to the house of Rekha Rani to inform her about the incident. Rekha Rani and Vijay Kumar reached the house of accused immediately. Pratibha had sustained burn injuries between 4.00 and 6.00 p.m. on 8th June, 1982. Dr. R. N. Batra (DW 1) who had come to the house of A-1 at about 7.00 p.m. was asked to inform Kamal Goyal on telephone about the death of Pratibha. Kamal Goyal on receipt of a telephone call from Dr. R. N. Batra from the house of A-1 was shocked to hear about his daughter's death. Kamal Goyal wanted to talk to A-1 personally but doctor told him that he would not be able to speak on telephone due to shock. Kamal Goyal and his wife left Sangrur for Jullundur and reached at the house of A-1 during mid night.

6. In the meantime A-1 asked Chanan Ram (DW 4) to go and lodge a report at the police station. However, at about 7.30 p.m. he met ASI Hardip Singh near the Laxmi Cinema and told him about the incident. His statement Ex. PH was recorded and the crime came to be registered as "death due to accidental burns." ASI Hardip Singh then reached the place of occurrence and started the investigation. An inquest Ex.P was held on the dead body of Pratibha. He also prepared the Panchnama of place of occurrence. Gopal Singh (PW 9) the Inspector, on getting the information about the incident reached the house of the accused at about 10.30 p.m. and took over the investigation. He recorded the statement of Rekha Rani Ex. PA/1 and forwarded the same to the police station which was formally treated as the FIR Ex. PA/2. During investigation he seized some of the articles lying in the kitchen. In the meantime, Kamal Goyal along with his wife reached there. An ambulance was arranged and the dead body of Pratibha was sent to the Civil Hospital, Jullundur. Vijay Kumar (PW 5), Subhash Chander and two constables, namely, Gurmit and Ghanshyam Dass accompanied the dead body. The post-mortem examination was conducted by the Board headed by Dr. B.S. Parmar (PW 3) along with Dr. Mandip Singh Sethi and Dr. Surinder Kaur. This was done at the instance of Harbans Lal, Advocate, an uncle of A-3. The statements of various persons were recorded during investigation. The accused came to be arrested on June 9, 1982. After completing the investigation, a charge-sheet was submitted

against four accused persons for an offence punishable under Section 302/34 IPC.

7. The accused denied the allegations levelled against them and they pleaded that they are innocent. They denied to have demanded any dowry or meted out any ill-treatment to Pratibha. They also denied to have taunted Pratibha on her squint in the eye. According to the accused she was treated very well in their house and there used to be no quarrels with her. The burn injuries on Pratibha were either accidental or suicidal and not homicidal. A-1, A-3 and A-4 pleaded that they were in the shop (ground floor) and busy with their customers and they first time came to know when A-4 went upstairs at about 6.00 p.m. who reported of a burning smell coming from their residential block. When they went upstairs they found Pratibha lying in the kitchen with burn injuries. The defence of A-2, Sarla Devi was one of alibi. According to her she had done to her sister's house at 4.00 p.m. as she had returned home after her eye operation. She came to know about the incident on her way to her house. She denied that she ever ill-treated her and claimed that she is innocent and be acquitted.

8. The prosecution case entirely rested upon the circumstantial evidence and it relied upon five circumstances, namely, (1) motive; (2) place and time of the incident; (3) presence of all the four accused at the time of occurrence; (4) conduct of the accused persons who gave a false explanation that deceased died due to accidental burn injuries; and (5) medical evidence.

9. In order to prove motive the prosecution relied upon the evidence of Rekha Rani (PW 1), Kamal Goyal (PW 2) and Vijay Kumar (PW 5). In addition to this evidence the prosecution also relied upon the evidence of formal witnesses including the police officers who investigated into the crime. The accused in their defence examined six witnesses including Dr. R.N. Batra (DW 1) and Chanan Ram (DW 4).

10. On careful scrutiny of the oral evidence and other materials on record the trial court by its judgment and order dated October 16, 1982 held that the prosecution had proved all the circumstances which had established beyond reasonable doubt that A-1, A-2, and A-3 were responsible for committing the murder of Pratibha. Having held so the learned trial judge convicted A-1, A-2 and A-3 under Section 302/34 IPC and sentenced each one of them to suffer life imprisonment and to pay a fine of Rs. 5,000/- in default of payment of fine to undergo further RI for two years. The learned trial judge, however, gave the benefit of doubt and acquitted Narinder Singh (A-4).

11. The appellants-convicts being aggrieved by the judgment and order of conviction passed by the trial court preferred criminal appeal to the Punjab & Haryana High Court at Chandigarh. The Division Bench of the High Court by its judgment and order dated April 30, 1993 after reappraisal of the evidence on record dismissed the appeal and confirmed their conviction and sentence. It is against this order of conviction and sentence, the three appellants on obtaining Special Leave filed three separate Criminal Appeals i.e. Criminal Appeal No. 45 of 1984 is filed by Baldev Krishan (A-1), Criminal Appeal No. 143/84 is filed by Sarla Devi (A-2) and Criminal Appeal No. 144/84 is filed by Ravi Kumar.

12. During the course of arguments we are informed by the learned counsel for the appellants that Baldev Krishan died on 5-2-1993, resultantly his appeal stands abated.

13. We have carefully gone through the judgments of the learned courts below and the evidence on record. Mr. U.R.

Lalit and Shri R.C. Kohli, Sr. counsel appearing for the appellants assailed the impugned judgment on various grounds. They urged that the courts below have totally misread the evidence of Rekha Rani (PW 1), Kamal Goyal (PW 2) and Ravi Kumar (PW 5) and strenuously urged that the evidence of these three witnesses did not make a mention that at any point of time any of the appellant/accused demanded dowry or any other articles of gift. The expression of poor quality of gifts or of meagre value assuming to be true would not and could not amount to a demand of dowry. The evidence of these witnesses in that behalf is nothing but their figment of imagination or at best inferential one and, therefore, finding of ill-treatment based on each evidence is unsustainable. They then urged that Pratibha had no physical disability much less any squint and, therefore, there was no question of teasing her on that score. They urged that there was no evidence worth the name on record to hold that any of the appellants/accused meted out ill-treatment to Pratibha at any time. They therefore, submitted that the finding of the courts below as regards motive to cause death is patently illegal and cannot be sustained.

14. After careful scrutiny of the evidence of these three witnesses and other materials on record, we are satisfied that the contentions raised by the learned counsel for the appellants are totally unsustainable. Rekha Rani (PW 1) and Kamal Goyal (PW 2) testified several instances where the appellants taunted Pratibha by saying that A-3 had better proposals who were prepared to give dowry of rupees two lakhs but they had accepted her proposal. The witness further stated that Pratibha always used to complain that members of her in-laws family often made humiliating remarks as regards the poor quality of gifts of meagre value given at the time of marriage. In the facts of this case such remarks in our opinion undoubtedly connected with harassment on account of insufficient dowry. There are ways and ways to express the demand of dowry. One adopted by the appellants could be said to be a sophisticated one without using the word "dowry". Rekha Rani in her evidence had referred to the incident in detail when she and her husband on 2nd June, 1982 went to give presents to Pratibha on Nirjala Kkadshi festival. From her evidence there is no manner of doubt that the appellants had given most humiliating treatment not only to Pratibha but also to Rekha Rani. A-2 had gone to the extent of calling the parents of Pratibha as bastards and telling her that they should have found out a suitable match for their daughter having a squint. The fact of ill-treatment meted out to Pratibha also finds support from the evidence of Kamal Goyal (PW 2) on two occasions when he had visited the house of A-1 when Pratibha was found totally perplexed and depressed and was unable to speak out her painful feelings. As and when Pratibha went to Sangrur and particularly when she had gone at the time of her delivery, she told her parents how she was treated by the appellants. The letters Exs. PB/1 and PB/2, on record do suggest and express concern over the well being of Pratibha at her in-laws house and those two letters were written to Rekha Rani (PW 1) and Vijay Kumar (PW 5).

15. Mr. Lalit contended that the evidence of Rekha Rani (PW 1), Kamal Goyal (PW 2) and Vijay Kumar (PW 5) did not even remotely suggest that A-3 had given any ill-treatment to Pratibha. The evidence on record is totally vague and could not be the basis of present conviction. We are not impressed by this argument because Kamal Goyal (PW 2) in his evidence has stated that Pratibha on several occasions had told him that the appellants were giving ill-treatment to her because

of insufficient dowry and also squint in her eye. We see no reason to discard the statement of Kamal Goyal in this behalf.

16. Mr. Lalit then urged that the prosecution had failed to lead any evidence as regards the physical ill-treatment and the reason being obvious that there was no such ill-treatment. The physical ill-treatment is one of the facets of ill-treatment and it is true that there is no such evidence but there is sufficient evidence on record to hold that appellants did cause a mental ill-treatment to Pratibha. The courts below have very carefully scrutinized the evidence in this behalf and in our opinion the findings as regards motive and ill-treatment call for no interference.

17. It was then urged by Mr. Lalit that the courts below have totally over looked the fact that Pratibha on December 24, 1981 was blessed with a son. This fact indicated that the relations between Pratibha and A-3 were quite cordial. He emphasised that the newly born son was hardly less than six months old at the time of incident and, therefore, it is difficult to believe that the appellants would think of committing the murder of Pratibha. We are not at all impressed by this argument but on the contrary this argument would go against the appellants. It would be difficult to believe that having regard to the ordinary course of human conduct and in particular of mother, she would commit a suicide and leave the child at the mercy of her in-laws. The contention as regards accidental death would be examined a little later.

18. The second circumstance relied upon by the prosecution was the place and time of the incident. There is no dispute that Pratibha died due to burn injuries in her matrimonial house. Her in-laws family was then consisted of A-1 to A-3 and the acquitted accused (A-4). The evidence on record does not show that any other person was staying in the house. Admittedly, the dead body of Pratibha was found in the kitchen. The time of incident was between 4.00 p.m. and 6.00 p.m. It is in these circumstances a reasonable explanation was expected from the accused as to under what circumstances Pratibha sustained the burn injuries. A-3 in his statement recorded under Section 313 Cr. P.C. had stated that he was busy in his shop between 4.00 p.m. and 6.00 p.m. and he did not know as to what happened on the first floor. A-2 in her statement recorded under Section 313 Cr.P.C. had been taken up a plea of alibi which we have found not acceptable. After careful scrutiny of the prosecution evidence on record and the statements of the appellants under Section 313 Cr.P.C. we have no hesitation in accepting the findings of the courts below that Pratibha sustained burn injuries in her matrimonial home which was a convenient place and opportune time for the accused to commit the offence in question. The prosecution, therefore, has proved this circumstance also.

19. The next circumstance, namely, conduct of the appellants (accused) who gave false explanation that the deceased died due to accidental burn injuries is again an important circumstance against the accused. Chandan Ram (DW 4) was asked to and lodge a report that Pratibha sustained accidental burn injuries. This was done only with a view to misguide the investigating agency and to take a plea that the incident was communicated to the police at the earliest opportunity without there being any time to concoct the same. Having held the guilt of the appellants proved in the present case, we are of the opinion that the conduct of the appellants in giving false information about accidental burn injuries sustained by Pratibha is a circumstance which

prosecution has rightly pressed into service and held proved by the courts below.

20. It was then urged on behalf of the appellants that the prosecution has failed to prove that the death of Pratibha was a homicidal. In support of this argument, it was urged that A-3 was in the shop premises on the ground floor when the incident took place. A-2 had gone to her sister's house to enquire about her health as she had returned from the hospital after her eye operation. In the absence of positive and credible evidence to prove the presence of the appellants at the time of occurrence on the first floor of the house, it would be unsafe to convict them under Section 302/34 IPC. In order to prove that at the time of occurrence A-3 was in the shop premises, the defence led the evidence of Surjit Singh (DW 2), Dina Nath (DW 3) and Chanan Ram (DW 4). All these witnesses tried to support the defence story by stating that when they visited the shop of A-3 for some work between 4 and 6 p.m., at the time A-3 was found dealing with the customers. The evidence of these three witnesses is nothing but a tailored made to suit the defence and in our opinion the courts below have rightly disbelieved their evidence. Ramesh Kumar Mittal (DW 5) testified that his mother was operated upon her eye on 3rd June, 1982 and she had returned to Jullundur on June 8, 1982. A-2 had come to his house to enquire about her mother at about 4.30 p.m. and left at about 6.00 p.m. This evidence again does not persuade us to accept it as credible one and in our opinion the courts below have committed no error in rejecting his evidence.

21. It was then contended on behalf of the appellants that there is no mention in the Panchnama that any kerosene smell was coming from the clothes of Pratibha or from her body. As against this Dr. B.S.Parmar (PW 3) who conducted the post mortem examination had noted that the clothes of the deceased were drenched in kerosene and the small piece of cloth was found tightly held between the teeth inside the mouth of dead body of Pratibha. Relying upon these discrepancies it was urged that the evidence of Dr. B.S.Parmar (PW 3) was totally inconsistent with the inquest Panchnama and the prosecution has created a false evidence that the clothes were drenched in kerosene to show that kerosene was used for burning her. It was also urged on behalf of the appellants that in the inquest panchnama it was mentioned that the clothes of Pratibha were completely burnt yet a new saree was found to have been wrapped around her body. This clearly indicated an attempt on the part of the prosecution to create a false evidence against the appellants. We have gone through the evidence of witnesses in this behalf, the inquest panchnama and the medical evidence very carefully and we are satisfied that there was no attempt whatsoever on the part of the prosecution to create any false evidence. It is no doubt true that the clothes of Pratibha were completely burnt and some parts of the burnt clothes were sticking to her body. In order to cover the body it appears that the body was wrapped up in the available saree. All that we could say about the inquest panchnama is that the police officer was not careful in doing his job. Dr. B.S.Parmar (PW 3) had no axe to grind against the appellants and we, therefore, prefer to accept his evidence to hold that the clothes of Pratibha were smelling kerosene.

22. It was then urged on behalf of the appellants that the medical evidence of Dr. B.S.Parmar (PW 3) did not prove that Pratibha met with a homicidal death. It was further urged that the burn injuries sustained by Pratibha could be

accidental and none of the appellants was responsible for these injuries. To find an answer to this contention we have very carefully perused the evidence of Dr. B.S.Parmar and the post mortem examination report. Dr. Parmar in his evidence has stated that Pratibha had sustained 100% burn injuries and her body and clothes were smelling kerosene. He further stated that a small piece of cloth was found in the mouth of Pratibha being held tightly between the teeth and small portion thereof could be seen from outside. He admitted that he did not open the jaw as it was closed tightly. Dr. Parmar stated that cause of death was 100% burn injuries. Learned Counsel for the appellants urged that there is serious lacuna in the medical evidence inasmuch as they did not take out the cloth piece from the mouth which could have been a decisive factor to know whether there was any kerosene residue on the cloth or it was smelling kerosene. Having not done so the inference of kerosene having been used to cause the burn injuries cannot be sustained. This submission again did not appeal to us because the other part of evidence of Dr. Parmar clearly indicated otherwise. Moreover, the fact that a piece of cloth was found in the mouth militates against the accused and completely rules out the possibility of accidental burn injuries. The courts below in our opinion have rightly concluded that Pratibha met with a homicidal death and the appellants were responsible for the same.

23. It was then contended that the appellants were convicted with the aid of Section 34 IPC for the substantive offence of murder alongwith A-4 but he was acquitted. In view of acquittal of A-4 it was contended that the conviction of the appellants with the aid of Section 34 IPC is bad. In support of this submission our attention was drawn to the reported decisions of this Court in *Pohalya Motya Valvi Vs. State of Maharashtra* (AIR 1979 SC 1949), *Shidagouda Ningappa Ghandavar Vs. State of Karnataka* (AIR 1981 SC 764), *Sharad Birdhichand Sarda Vs. State of Maharashtra* (AIR 1984 SC 1622), *Laxman Naik Vs. State of Orissa* (AIR 1995 SC 1387) and *Suresh Chandra Bahri etc. etc. Vs. State of Bihar etc. etc.* (AIR 1995 Supp (1) SCC 80). We have carefully gone through these judgments and in our opinion all these decisions are clearly distinguishable on facts. The ratio laid down in these decision has no application to the facts of the present case.

24. In the result we find no substance in both the appeals and they are accordingly dismissed. The appellants who are on bail shall surrender to their bail bonds to serve out the remainder of their sentences.