

[2010] 2 S.C.R. 1

SUDHIR KUMAR

v.

STATE OF PUNJAB

(Criminal Appeal No. 1327 of 2003)

JANUARY 14, 2010

[HARJIT SINGH BEDI AND J.M. PANCHAL, JJ.]

PENAL Code, 1860:

s. 304-B – Dowry death – Death of bride by 95% burn injuries in her matrimonial home in 4 month after marriage – Husband, in-laws and sisters-in-law of deceased prosecuted – Husband convicted and others acquitted – Plea of husband that since prosecution case was disbelieved in respect of other accused, presumption u/s 113-B of Evidence Act stood rebutted and he was also entitled to acquittal – HELD: Prosecution case has been fully proved by oral and medical evidence – It is for the defence to dispel the presumption u/s 113-B – It is true that four of the five accused have been acquitted and some of them on benefit of doubt – But primary evidence is against the husband – A reading of the evidence shows that it was the husband who had, just a few days before the incident, threatened his wife with dire consequences if his demand for dowry was not fulfilled – He was seen again beating his wife and threatening that if the demands were not satisfied the deceased would pay dearly for it – It is true that in a case where the prosecution evidence has been discarded with respect to four of the five accused, the presumption u/s 113-B could to some extent be said to be dispelled, but in the instant case, on an over view the primary role and the weight of the evidence has been on the husband-accused– Evidence Act, 1872 – s.113-B.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1327 of 2003.

A From the Judgment & Order dated 7.4.2003 of the High Court of Punjab & Haryana at Chandigarh in CrI. Appeal No. 55-SB of 1990.

B A. Sharan, Bimal Roy Jad, Vikram Rathore, Anurag Sharma, Sharmila Upadhyay for the Appellant.

Kuldip Singh for the Respondent.

The following Order of the Court was delivered

C **O R D E R**

The prosecution story is as under:

D Kamlesh Rani deceased, daughter of PW.3-Tej Ram was married to Sudhir Kumar, the appellant herein, on 28th July, 1989 at Maur Mandi, District Bhatinda. At the time of marriage, ornaments and cash befitting the status of the families, were given in dowry. A month after the marriage, however, the appellant and his parents Angoori Lal and Kaushalya Devi and sisters Neelam Kumari and Urmila Devi started maltreating Kamlesh Rani for having brought insufficient dowry. Sudhir Kumar also demanded a scooter for himself and a gold ring each for his sisters Neelam and Urmila. The demand was duly conveyed by Kamlesh Rani to her parents at Maur Mandi. Tej Ram promised to fulfill the demand on which Kamlesh Rani returned to her matrimonial home and was immediately questioned by her mother-in-law as to the scooter and the gold rings. Bhim Sain, brother of Kamlesh Rani, however, told them that the family was not in a position to fulfill the demand on account of financial difficulties. He, however, returned to Maur Mandi after leaving Kamlesh Rani in the matrimonial home. E About 10 days prior to the incident Ramji Das-PW.2, Tej Ram's younger brother, came to Maur Mandi and told Tej Ram that the accused had given slaps to Kamlesh Rani in his presence on which he had promised that the demand for a scooter and gold rings would be fulfilled within a few days. Sudhir Kumar also came to Maur Mandi and once again reiterated the demands H

to his father-in-law failing which he threatened dire A
consequences for Kamlesh Rani. On 30th November, 1989,
Bhim Sain went to the house of the accused and found the
outer gate shut. On persistent ringing of the bell, Angoori Lal
came out but moved away and when Bhim Sain entered the
house he noticed Kamlesh Rani's dead body lying in the latrine. B
Bhim Sain immediately came to the house of his uncle Ramji
Das PW.2, and the two then went to the police station where
the former lodged the report Exh. PD on the basis of which an
FIR was registered. Sub-Inspector Santokh Singh thereupon
reached the place of incident and made the necessary C
inquiries. On completion of the investigation a challan was duly
presented against Angoori Lal, Kaushalya Devi and Neelam
and Urmila for an offence punishable under Sections 302/34
of the IPC and the matter was brought for trial to the Court of
Sessions. The Court of Sessions, however, charged the D
accused under Sections 302/149 IPC read with Section 304(B)
of the IPC in the alternative.

The prosecution in support of its case relied on the
evidence of PW.1 Dr. S.S. Malik who had performed the post- E
mortem on the dead body, the three primary witnesses PW.2-
Ramji Das, PW.3-Tej Ram and PW.4-Sat Paul, also an uncle
of the deceased, in addition to the formal evidence of Santokh
Singh the I.O. The statements of the accused were thereafter
recorded under Section 313 of the Cr.P.C. and they denied the F
allegations simplicitor. Sudhir Kumar, however, took up
additional plea:

"I am innocent. I have been falsely involved. This
occurrence has taken place before noon time and at that
time myself and my father Angoori Lal were present at our G
medical store while my sister Neelam Kumari was teaching
at private school and Urmila was at her in-laws house. I
was suffering from Epilepsy and used to be treated by Dr.
Sohan Lal Grover and other senior doctors before and after
marriage and due to the effect of the drugs I was unable H

A to perform the sexual intercourse and for that reason my wife used to remain under depression. After the occurrence we were summoned from the shop. I never maltreated or demanded dowry from the parents of the deceased."

B They also produced some evidence in defence. The trial Court on an appreciation of the evidence convicted the appellant and Kaushalya Devi, his mother under Section 304-B of the IPC and sentenced them to R.I. of seven years. Angoori Lal, Urmila and Neelam were, however, acquitted. An appeal C was thereafter taken to the High Court which in its judgment dated 7th April, 2003, which has been impugned in the present proceedings, allowed the appeal of Kaushalya Devi as well. This appeal by way of special leave is, therefore, confined only D to Sudhir Kumar, the husband of the deceased.

D We have heard Mr. A. Sharan, the learned senior counsel for the appellant and Mr. Kuldip Singh, the learned counsel for the State of Punjab. We find that the prosecution story is fully E proved by the evidence of PW.2- Ramji Das, the uncle of the deceased, PW.3 Tej Ram, her father and PW.4. Sat Paul, another uncle of the deceased. The medical evidence shows F that the deceased had suffered 95% burn injuries and the dead body had been found in the bathroom of the house. Keeping in view the fact that the presumption under Section 113-B of G the Evidence Act has to be raised in such matters, it is for the defence to dispel the presumption. We find that the trial Court and the High Court have gone through the evidence and given the benefit of doubt to three of the accused while maintaining the conviction only against one i.e. the husband of the H deceased. We also see from the evidence that the marriage had been performed on 28th July, 1987 and death had occurred on 30th November, 1987, that is just four months after the marriage.

H Mr. Sharan, the learned counsel for the appellant has, however, submitted that in the light of the fact that the

prosecution story had been disbelieved with respect to four of the five accused, the presumption under Section 113-B of the Evidence Act had been rebutted and as such the appellant was entitled to acquittal on parity with the other accused. It is true that four of the five accused have been acquitted but we find that primary evidence is against Sudhir Kumar, the appellant herein. A reading of the evidence shows that it was the appellant who had, just a few days' before the incident, visited the house of his father-in-law and threatened Kamlesh Rani with dire consequences if his demand for a scooter and two gold rings was not fulfilled and Bhim Sain, the brother of the deceased had told him that his father Tej Ram was not in a position to meet the demands on account of financial difficulties. A few days later Ramji Das (PW.2) too had visited Kamlesh Rani's in-law's home and had also informed Tej Ram thereafter that the appellant had been found beating his wife at that time and had once again threatened that if the demands were not satisfied Kamlesh Kaur would pay dearly for it. It is true, as contended by Mr. Sharan, that in a case where the peculiar evidence has been discarded with respect to four of the five accused, the presumption under Section 113-B could to some extent be said to be dispelled, but on an over view we find that the primary role and the weight of the evidence has been on the appellant herein.

We, accordingly, find no merit in this appeal.

Dismissed.

N.J.

Appeal dismissed.