

**318 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRA-D-83-DBA of 2003 (O&M)
Date of Decision: 05.11.2019**

STATE OF HARYANA

.....Appellant

VS.

SMT. BUGLI

.....Respondent

**CORAM : Hon'ble Mr. Justice Jitendra Chauhan and
Hon'ble Mr. Justice H.S. Madaan.**

Present : Mr. Vikrant Pamboo, DAG Haryana
for the appellant-State.

Mr. R.N. Lohan, Advocate,
for the respondent.

JITENDRA CHAUHAN.J.

This appeal is directed against the judgment dated 10.05.2002 passed by Additional Sessions Judge, Jind, vide which the accused/respondent was acquitted of the charge in FIR No.105 dated 30.04.2001 registered under Section 304-B IPC at Police Station Sadar, District Jind.

The brief facts of the case as noticed in the judgment passed by the trial Court in paragraph Nos. 2 and 3 are reproduced as under:-

“2. Smt. Navita was married with Ishar of village Rajpura Bhain, District Jind in accordanced with Hindu rites and ceremonies in the month of March, 2000 and she joined her matrimonial house to live with her husband. It was a joint Hindu family and Smt. Navita also started residing

with other members of the family consisting of her brother-in-law (younger brother of her husband) and two sisters-in-law besides her mother-in-law Smt. Bugli accused.

3. According to the prosecution, Smt. Navita was being harassed and treated with cruelty by Smt. Bugli accused stating that she was not beautiful and she had been accepted as a wife for nothing. As the prosecution story goes, it was on 29.04.2001 that Smt. Navita was present in the house with the accused and she was exhorted to take 'celphos' tablets. The accused also asked the deceased in a satirical manner to consume celphos tablets which were kept in the "Chobara" of the house. Resultantly, felt harassed Smt. Navita took the celphos tablets and the accused supplied a glass of water to facilitate the taking of the tablets. The accused also declared that she asked the deceased to consume the tablets so that they could get rid of her so as to make a room for re-marriage of her son"

After completion of investigation, challan/report under Section 173 Cr.P.C was presented in the Court. As the offence under Section 304-B IPC is triable by Court of Session, the case was committed to the said Court.

Charge under Sections 304-B IPC was framed against the accused to which the accused did not plead guilty and claimed trial.

In order to prove its case, the prosecution examined PW-1, Shri Niwas, Head Constable, PW-2 Darshan Singh, PW-3 Constbale Dilbag Singh, PW-4 Dr. Anant Ram, PW-5 Ram Mehar, PW-6 Umed Singh, PW-7 Satpal, PW-8 Dr. Kuldeep Rana, PW-9 Dr. Vijender Singh, PW-10 Dr. Ashwani Kumar, PW-11 Bansi Lal, PW-12 Om

Parkash Bishnoi, PW-13 Ram Mehar and closed the evidence.

The statement of the accused under Section 313 Cr.P.C was recorded in which all the incriminating circumstances appearing in the prosecution evidence were put to the accused to which the accused denied and pleaded false implication. She took the plea of *alibi*.

In defence evidence, Balwant son of Biru was examined as DW-1.

After appraisal of evidence, the learned trial court vide impugned judgment acquitted the accused/respondent of the charges framed against her.

Feeling dissatisfied with the impugned judgment, the present appeal has been filed by the State of Haryana.

It is contended by the learned State counsel that it was a case of dowry death and since the deceased had died an unnatural death within seven years of her marriage, there was a presumption that it was a dowry death. The accused/respondent had a lust for dowry and more particularly for a Hero Honda motor cycle for her son. The fact that the prosecution had arraigned the mother-in-law only strengthens the veracity of its case. It is further contended that the dying declaration (Ex. P-2) is itself sufficient to hold conviction of the accused. It does not need any corroboration from any other witness. The trial Court has lost sight of the fact that the deceased had died within 6-7 months of her marriage; soon before her death, there was a demand of dowry; the death had occurred in unnatural way, therefore,

with the aid of Section 113-B of the Evidence Act, 1872, the accused/respondent ought to have been convicted under Section 304-B IPC.

On the other hand, on behalf of the respondent/accused, it is contended that the mother-in-law had hardly any concern with the motor cycle as she was 45 years of age at the time of incident. She hailed from a country side and had no experience of driving. As regards, husband and other relatives, there was no allegation of any demand of dowry. Even the demand qua mother-in-law has not been supported by the family members of the deceased. The dying declaration, in the case, is insufficient to base conviction.

We have heard the learned counsel for the parties and have gone through the case file.

It is to be noticed that Ram Mehar (PW-5) father and Umed Singh (PW-6) and Satpal (PW-7) both uncles of deceased Navita were declared as hostile but nothing could be elicited from their testimony to support the case of the prosecution.

It is settled proposition of law that a dying declaration can form the sole basis of conviction. The *locus classicus* case on the issue is **Khushal Rao Vs. State of Bombay, AIR 1958 SC 22**. The relevant paragraphs of the judgment are reproduced as under:-

(1) that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated;

(2) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made;

(3) that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence;

(4) that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence;

(5) that a dying declaration which has been recorded by a competent magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character, and

(6) that in order to test the reliability of a dying declaration, the Court has to keep in view, the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.”

In view of the above, we are called upon to determine as to whether the sole dying declaration inspires the confidence of the Court or not. Firstly, there is no explanation tendered by the prosecution as to why any Judicial Magistrate was not called to record the dying

declaration. Further, it has not been alleged by Ram Mehar (PW-5), the father and Umed Singh (PW-6) and Satpal (PW-7) uncles of the deceased that there was any demand of dowry by the accused. The opinion of the doctor regarding fitness of the deceased was taken on a separate paper. The dying declaration (Ex.P-2) cannot be accepted to base conviction particularly when the near relatives of the deceased have not alleged any demand of dowry by the accused. Otherwise also, the mother-in-law had no concern with the alleged demand of motor cycle. She cannot be said to be the beneficiary of the same. Moreover, as per PW-12 Om Parkash Bishnoi, Executive Magistrate, Hisar, the dying declaration was recorded on 30.04.2001 at 2.30 p.m whereas, as per PW-4, Dr. Anant Ram, Incharge, Janta Hospital, Barwala, Navita had breathed her last at 1.10 p.m on 30.04.2001 which also creates a serious doubt on the veracity of the dying declaration recorded by the Magistrate. In the absence of any corroborative evidence, the dying declaration (Ex.P-2) made by Smt. Navita cannot be made the sole basis to convict the accused/respondent. It is well settled proposition that the greater the charge, the responsibility of the prosecution is relatively higher. Though, the defence witness has failed to prove that at the time of the alleged incident, the accused was in village Sirsana, District Hisar which is situated at a distance of 60 kms from village Rajpura Bhain, District Jind but the fact remains that the prosecution has to stand on its own legs. We have no hesitation in holding that the prosecution has miserably failed to prove its case against the accused

and the Court feels that the dying declaration (Ex.P-2) is shrouded with mystery.

It is a settled law as has been held in ***C. Antony Vs. K.G. Raghavan Nair***, 2002(4) RCR (Criminal) 750 that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption in his favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

In ***State of Rajasthan vs Shera Ram @ Vishnu Dutta***, (2012) 1 SCC 602, Hon'ble the Supreme Court has held as under:-

“13. When an accused is acquitted of a criminal charge, a right vests in him to be a free citizen and this Court is very cautious in taking away that right. The presumption of innocence of the accused is further strengthened by the fact of acquittal of the accused under our criminal jurisprudence. The courts have held that if two views are possible on the evidence adduced in the case, then the one favourable to the accused, may be adopted by the court. However, this principle must be applied keeping in view the facts and circumstances of a case and the thumb rule is that whether the prosecution has proved its case beyond reasonable doubt. If the prosecution has succeeded in discharging its onus, and the error in appreciation of evidence is apparent on the face of the record then the court can interfere in the judgment of acquittal to ensure that the ends of justice are met. This is the linchpin around which the administration of criminal justice revolves.

14. It is a settled principle of criminal jurisprudence that the burden of proof lies on the prosecution and it has to prove a charge beyond reasonable doubt. The presumption of innocence and the right to fair trial are twin safeguards available to the accused

under our criminal justice system but once the prosecution has proved its case and the evidence led by the prosecution, in conjunction with the chain of events as are stated to have occurred, if, points irresistibly to the conclusion that the accused is guilty then the court can interfere even with the judgment of acquittal. The judgment of acquittal might be based upon mis-appreciation of evidence or apparent violation of settled canons of criminal jurisprudence.”

In view of the above, the present appeal filed by the State of Haryana is dismissed and the impugned judgment passed by the trial Court is upheld.

05.11.2019
SN

(JITENDRA CHAUHAN)
JUDGE

(H.S.MADAAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No