

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-AD-139-2022 (O&M)

DATE OF DECISION : 02.12.2023

Baljeet Singh

...Appellant

Versus

State of Haryana and another

...Respondents

CORAM : HON'BLE MR. JUSTICE G. S. SANDHAWALIA
HON'BLE MS. JUSTICE LAPITA BANERJIPresent : Mr. Abhishek Kaushik, Advocate for
Mr. Munish Jolly, Advocate,
For the Appellant.**LAPITA BANERJI, J.****BRIEF FACTS :**

This appeal by the complainant arises out of a judgment and order dated January 20, 2020 passed by Learned Additional Sessions Judge, Rohtak. By the impugned judgment and order dated January 20, 2020 the accused Anand was acquitted of charges under Sections 498A and 304-B of the Indian Penal Code.

2. The complainant/Appellant being the father of deceased/victim girl, Reena had lodged an FIR being No.124 dated 02.03.2018 registered under Section 304-B of IPC at Police Station City Rohtak. As per FIR, he got his daughter Reena married to the accused Anand in April, 2015. His daughter gave birth to a male child in January 2018, approximately two months before her death. Immediately prior to the delivery, his daughter was living in her parental home. The delivery was at BPS Government Medical College for Women, Khanpur, Sonapat in January, 2018.

3. On February 26, 2018, accused Anand brought back his daughter Reena and the new born child to Rohtak. On March 01, 2018 Reena visited her in-law's place at village Bhawar for attending a religious ceremony. On March 02, 2018, Reena called the Appellant and according to his version, informed him that she was not feeling well and was not being provided medical treatment.

When the Appellant/Baljeet called the accused Anand he was informed that Reena had died at Post Graduate Institute of Medical Science, Rohtak (hereinafter, referred to as “PGIMS”).

4. The Appellant alleged that he had given sufficient dowry during the marriage of his daughter. After her marriage, her husband/ Anand, mother-in-law Pinki, father-in-law Dharambir and brothers-in-law Jaideep and Sandeep used to harass her and make further demands for dowry at the matrimonial home. Whenever his daughter fell ill, she was not provided with medical assistance.

5. It is the Appellant’s case that her daughter was further harassed because she did not get sufficient goods/articles during ‘Pilia’ ceremony. Consequently, his daughter committed suicide on account of being harassed by Anand and the above-mentioned four family members of her husband.

6. After the FIR was lodged under Section 304-B IPC bearing No.124 dated March 02, 2018, Police Station City Rohtak, the accused was arrested on August 14, 2018. On completion of investigation, final report was presented under Section 173 of the Code of Criminal Procedure (hereinafter, referred to as “CrPC”) for commencement of trial. As per order dated January 22, 2019, the accused was charged for commission of offence under Sections 498-A and 304-B of the Indian Penal Code (hereinafter, referred to as “IPC”). The accused Anand pleaded ‘not guilty’ to the aforesaid charges.

INVESTIGATION AND TRIAL PROCEEDINGS

7. On March 02, 2018, ASI Sunit Kumar/**PW-13** and Head Constable Parveen Kumar/**PW-12** were on patrolling duty. Upon receiving a message from Police Station PGIMS, Rohtak regarding victim Reena’s death, they reached the Police Station for collecting necessary information. Thereafter, they reached the emergency gate of PGIMS, Rohtak where the Appellant Baljeet Singh got his statement recorded and also alleged that his daughter had put an end to her life being tortured by her in-laws. The post-mortem was conducted on March 03, 2018 at about 12:30 hours. As per record, the deceased died at around 03:20 pm

on March 02, 2018. There was no external mark of injury on the entire body of the deceased. From the post-mortem report prepared by Dr. Arun Kumar, Department of Forensic Medicine, PGIMS, Rohtak/**PW-6**, it appeared that cause of death was “aluminium phosphide poisoning” and its complications.

8. After lodging of the FIR No.124 dated March 02, 2018, the accused was arrested on August 14, 2018. The FIR was lodged against Anand under Section 304-B IPC. On completion of investigation, challan under Section 173 Cr.P.C was presented against the accused for commencement of trial on August 23, 2018. By an order dated September 13, 2018 Judicial Magistrate 1st Class, Rohtak recorded that after the initial investigation challan was presented to the accused Anand for trial for commission of offences under Sections 498-A and 304-B of IPC. The offence under Section 304-B IPC is triable by the Court of Sessions. The accused was directed to be produced before learned Sessions Judge, Rohtak on September 24, 2018 and was directed to be remanded in judicial custody until the conclusion of the trial. On January 22, 2019, the accused was charged for commission of offence punishable under Sections 498-A and 304-B of the IPC. The accused pleaded ‘*not guilty*’ to the same. Hence, the trial.

9. In the course of cross-examination of the Appellant on July 11, 2019, it was submitted by learned Public Prosecutor that he wanted to move an application under Section 319 of the Cr.P.C for impleadment of the father-in-law, mother-in-law and brothers-in-law of victim Reena, to be tried and face trial in the ongoing proceedings.

10. It was alleged that police was in collusion with the aforesaid persons and placed them in column No.2 of the challan. By an order dated September 02, 2019 the application for summoning of the in-laws as additional accused was rejected by the Additional Sessions Judge-cum-Special Judge, Rohtak, as being unmeritorious. The Additional Sessions Judge-cum-Special Judge, Rohtak held that the Investigating Officer during the investigation found that the victim Reena was living with her husband Anand on the first floor of the

house belonging to one Dharamvir Advocate. She was taken to PGIMS, Rohtak from there. No suspicious material (vomiting, glass etc.) was available from the spot. Reena used to live with her husband in a rented accommodation since four months after their marriage. The in-laws stayed in village Bhawar and on the day of occurrence also, they were there. One of the brothers-in-law Sandeep, was also employed in army prior to the marriage of victim Reena. Re-investigation was done by Inspector Jagbir Singh and also Prithvi Singh, DSP and it was found that the in-laws did not visit the victim at the rented accommodation. Therefore, the contention that the deceased was harassed by her in-laws at her rental accommodation during their visits did not appeal to the conscience of the Court. Consequently, the application under Section 319 of Cr.P.C was dismissed.

11. 14 witnesses were examined on behalf of the prosecution. After examination of prosecution witnesses, all the incriminating material was put to the accused in the form of questions and answers. The accused pleaded false implication in the case and opted to lead evidence. 07 witnesses were examined on behalf of the defence. The defence evidence was closed on January 09, 2020.

OBSERVATIONS BY THE TRIAL COURT

12. The trial Court framed two issues :

(i) Whether accused husband subjected Reena to cruelty for unlawful demand of dowry soon before her death and due to harassment and torture on account of demand of dowry, she committed suicide within 7 years of her marriage which is otherwise abnormal circumstance resulting in her death and committed the offence punishable under Sections 498-A and 304-B of IPC?

(ii) Whether the accused has succeeded in probabalising his defence?

13. The trial Court gave brief resume of the evidence of the prosecution. The Appellant/Baljeet Singh deposed that the accused/ husband-Anand and aforesaid four in-laws of the victim Reena used to taunt her for bringing less dowry. They used to tell her that she came from a 'beggar's family' and also beat her. Since two years prior to the occurrence, his daughter Reena

used to live with her husband at Rohtak. The accused and also the in-laws did not provide any medical aid to his daughter and as a result thereof, she was kept at her parental house after delivery. The accused had not even named the child. When the new born child and his daughter were brought back to Rohtak on February 26, 2018 they again asked for gifts for 'Pilia' ceremony. On March 01, 2018 Reena went to village Bhawar for a religious ceremony. On March 02, 2018, Reena called him and told him that she was not feeling well but was not given medical treatment. When the Appellant called Anand to inform about Reena's health, Anand informed him that Reena died at PGIMS, Rohtak during her treatment.

14. On March 06, 2018, the Appellant produced one photograph Exhibit P-7 of the marriage of his daughter. Exhibit P-8 is the list of articles. Saroj, mother of the deceased (PW-11) also testified on the same lines as Appellant/Baljeet Singh (PW-5).

15. The trial Judge found that the Public Prosecutor raised the following contentions :

"1. The deceased had died at her matrimonial home within seven years of her marriage;

2. She was harassed mentally as well as physically by the accused in connection with dowry demand soon before her death;

3. The commission of suicide by the deceased is one of the abnormal circumstances.

16. He argued that Sections 498-A and 304-B of the IPC were proved by the prosecution and it was prayed that the accused should be convicted and sentenced accordingly. The learned counsel for the complainant drew the attention of Court to Sections 106 and 113-B of the Indian Evidence Act, 1872 (hereinafter referred to as "the Evidence Act"), both of which are reproduced herein after :

14. Section 106 of Indian Evidence Act runs as under:-

106. Burden of proving fact especially within knowledge- When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations

- a) *When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.*
- b) *A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.*

15. Section 113-B of the Indian Evidence Act runs as under:-

“113-B. 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 demand for dowry, the Court shall presume that such person had caused the dowry death.”*

17. When a woman dies within 07 years of marriage at her matrimonial home and within four walls of the same, it would be very difficult for the family members of the accused to prove their innocence. Therefore the legislature has introduced the concept of ‘*presumption*’. The learned trial Court was of the view that it was also extremely difficult for the accuseds to prove their innocence in view of the presumption against the accuseds with respect to dowry death of the bride within seven years of marriage. In this context, Section 4 of the Evidence Act was referred to, which is reproduced hereinafter :

Section 4 of Indian Evidence Act runs as under:-

4. “May Presume”- *Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.*

“Shall Presume”.*—Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.*

“Conclusive Proof”.*—When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.”*

18. It was accordingly held by the Trial Court that the ‘*presumption*’ under Section 113-B of the Evidence Act is a rebuttable presumption. The

accused could rebut the presumption against him by cross-examining the prosecution witnesses and by leading evidence to the contrary.

19. The counsel for defence (accused/Anand), argued that the accused has been falsely implicated. There was no dispute between the husband and wife regarding demand for dowry. The accused was financially sound and in fact helped his in-laws financially. There was no complaint of torture of Reena either physically or mentally prior to her death, at the hands of accused either by him or by his parents. Never was any Panchayat convened by the deceased's family members accusing the husband or his family members of any torture. The deceased died due to depression as she was very weak and her haemoglobin was low. Furthermore, she suffered from various ailments and had to undergo frequent treatments for which she was completely fed up and committed suicide.

20. The trial Court analyzed the evidence of the parents of the deceased and their conduct before and after the death. The Appellant had five daughters and one son. Four daughters were already married. At the time of deposition the youngest daughter was aged 21 years and was yet to be married. The Appellant's son got married three years back but his daughter-in-law lived separately at her parental home for the last one year even though a new mother.

21. Admittedly, the Appellant had only around Rs.1000-1100/- in his bank account. He was a small agriculturist having 2- ½ killas of land and also was working as a postman whereas the accused had 12- ½ killas of land. The Appellant stated that he gave dowry to his daughter Reena as per his capacity, out of his free will. Reena lived with her in-laws for about 5-6 months and thereafter shifted to Rohtak. Accused possessed a JCB and a tractor. Due to failure to conceive, she was treated at Rohtak to undergo the IVF procedure.

22. Admittedly, Appellant never visited his daughter nor went to her in-laws house after her pregnancy. On the date of occurrence the Appellant and his family members reached PGIMS, Rohtak around 4:00/4:30 pm. His statement was recorded at 5:00 pm. Then they went back to their village. The next morning

they came back to take part in the cremation proceedings. The Appellant did not visit the child thereafter at any point in time. He also did not visit the child on his birthday. He was also not aware whether the child was named “Ansh”. He was also unaware whether the child was treated on February 27/28th by Dr. Satish Sharma. He stated that no complaints were made against the accused prior to the death of his daughter, as there was a compromise. However, he did not mention the factum of such compromise in his statement/**Exhibit P-6**. He stated that the accused worked as a driver with a building material supplier by the name of Dheeraj Hooda. He also admitted in his cross-examination that he used to take money from the accused during the marriages of his daughters. However, he claimed to be unaware of the fact whether a sum of Rs.30,000/- was taken from the accused and said Dheeraj Hooda deposited the said amount in the bank account of his daughter Sangeeta, maintained with the State Bank of India.

23. He also admitted that his daughter Reena was very weak and had low haemoglobin during pregnancy. He did not know whether she remained ill or whether she was treated at various hospitals. He was also unaware whether his daughter was treated at PGIMS, Rohtak for infertility and was subjected to Sonography test. He had no idea whether she was treated at General Hospital, Rohtak or Advanta Super Specialty Hospital, Rohtak.

24. The trial Court also looked into the statements made by **PW-13**/Investigating Officer (ASI Sunit Kumar), who had recorded statements of Appellant/Baljeet Singh, his wife-Saroj (mother of the deceased) and Shamsher/deceased's uncle on the date of occurrence. Advocate Dharampal (landlord of the deceased) and his wife were also present there. However, their statements were not recorded on the date of occurrence. The Investigating Officer did not find any incriminating material at the spot. From the investigation, no specific date or month or year of harassment of the deceased by her husband or family members came across. There was no proof or receipt of any articles purchased as part of the dowry articles or 'Pilia' articles by the complainant.

25. Then the stand of accused was taken into consideration by the learned trial Court by referring to statement under Section 313 of the Cr.P.C. The accused maintained that he was innocent and falsely implicated by the police in connivance with the complainant. The complainant reached PGIMS, Rohtak around 4:00/4:30 pm, and they reached their village at 8:00/8:30 pm. The Investigating Officer stated in his statement that the complaint was recorded at 9:35 pm. There is no allegation regarding specific dowry demand or specific act of harassment. There is no specific date, month or year mentioned regarding the allegations of dowry demand. The deceased resided with him at Rohtak in a rented house since long. The husband got her treated at different hospitals including PGIMS, Rohtak and Advanta Super Specialty Hospital, Rohtak. Their son was named "Ansh" shortly after his birth. The deceased was apparently frustrated due to her severe illness and even spoke to her sister on the date of occurrence. She admitted that her husband did his best to locate a doctor but could not do so due to heavy rain and also the day being festival of Holi. The deceased had then led a normal relationship and was satisfied with her husband in all respects. The accused had advanced a huge amount to the Appellant/complainant and same was never returned to him. The accused was falsely implicated since he demanded back his money. The complainant not only did not return the money but also made further demands for more amount.

26. The defence witnesses were also examined to prove this fact. The doctors, being **DW-2** Dr. Harveen Kaur and **DW-4** Dr. Natasha, supported the case of defence that patient/deceased was treated by them and was prescribed medicines. **DW-1** also a doctor/Paediatrician Dr. Satish Sharma, deposed that he treated 'Ansh'. **DW-5** Naveen (Clerk, State Bank of India) deposed that a sum of Rs.30,000/- was sent to the bank account of Sangeeta/sister-in-law of the accused. The Manager of Oriental Bank of Commerce/**DW-7** was also examined and it was recorded that a sum of Rs.30,000/- was transferred through NEFT in the bank account of Sangeeta.

27. **DW-3**, Advocate Dharamvir Narwal (landlord of the accused) deposed that since June, 2017 the accused stayed at his house with his wife. His wife remained frequently ill and therefore, he shifted his rented accommodation from the previous one also in Rohtak, to his house. He often took his wife for medical treatment. The accused worked at a Crusher and also had a tractor-trolley. Parents of the accused did not visit his house and there was no dispute between the husband and wife regarding dowry. The deceased had come back to their house 2-3 days prior to the occurrence and the child was ill and the accused had got him treated by a doctor.

28. After analyzing the evidence, the trial Judge was of the opinion that the accused was financially sound and helped his in-laws. The accused also sent his tractor-trolley and instruments of agriculture for helping his father-in-law/Appellant with agricultural work. The Appellant also admitted that the accused helped him financially during the marriage of his daughters. There was no complaint of torture, either physically or mentally, at the hands of accused prior to the death of his daughter. No Panchayat was ever convened on the said matter and there was no medical report of the deceased to show that she was either beaten or there was any mark of injury at any point in time.

29. The Appellant had admitted that Reena was treated for infertility through IVF and the said treatment was done by her husband and in-laws. During and after the child was born, the accused/husband and his aunt (Bua) took care of the child at BPS Government Medical College for Women, Khanpur, Sonapat. Evidence of Dharamvir Advocate also showed that the deceased was very weak and frequently remained ill and the accused used to get her treated, and there was no dowry dispute between the couple.

30. There was no evidence of any telephonic conversation between the Appellant and his daughter Reena. Though there are allegations of dowry demand but it could not be proved that when such demand was made. Even though the

accused alleged that further dowry demand was made during 'Pilia' ceremony but even the date of the said ceremony was not mentioned.

31. The Trial Court observed that the defence witnesses are entitled to equal weightage as the prosecution witnesses relying on **Abbas Ahmed Choudhary v. State of Assam** reported as “ (2010) 12 SCC 115” and the cardinal principle is that the prosecution has to prove its case beyond reasonable doubt. **State of Haryana v. Ram Singh reported in** “2002 (1) RCR (Criminal) 443 (SC)”, was also relied upon by the trial Court.

32. Resultantly, the trial Court held that deceased was not subjected to cruelty on account of dowry demand but died due to depression since she was fed up with her life due to various ailments. The deceased had then decided to end her life on her own volition and it was not due to the fault of accused. Since Issue No.1 (i) was determined against the prosecution, therefore, on Issue No.2 it was decided that the accused succeeded in probalising his defence and therefore it was answered in his favour.

FINDINGS :

33. This Court has considered the evidence, material on record, arguments of counsel and findings of the trial Court. It is pertinent to note that the complainant himself has admitted that his daughter Reena used to reside separately from her in-laws with her husband since 5-6 months after her marriage. He has also admitted that he had about 2/2-1/2 killas of land whereas the accused had more than 12-1/2 killas of land which he cultivated with his father. The agricultural tools, JCB and the tractor were also given by the accused to the complainant for the purpose of cultivation. The complainant gave a list of articles that he claimed was given as a part of dowry and also list of articles given during 'Pilia' ceremony, but neither handed over any bills or receipts evidencing purchase of said articles nor indicated from where they were purchased and when they were purchased. The complainant also did not reveal when the 'Pilia' ceremony was held and when and where the articles given. Furthermore, the

appellant admitted that after the cremation, he along with his family members neither came to collect the mortal remains of his daughter nor were they aware as to whether the Terahwi ceremony of his daughter was conducted. He also admitted that he was unaware whether his daughter was treated at Civil Hospital, Rohtak or Advanta Super Speciality Hospital. Though the complainant claimed to have gotten his daughter treated by a *desi* doctor, he neither could recollect the name of the doctor nor the year during which such treatment was given to her. All the statements point towards the fact that he was neither in touch with his daughter nor took care of her well being.

34. The appellant did not even visit the child after the death of his daughter and was also not aware whether the child was treated by Dr. Satish Sharma, on April 27, 2018 after death of his daughter. He has also indicated that after the child was born and during the deceased's treatment at BPS Government Medical College for Women, Khanpur, Sonapat, the accused and his aunt (Bua) used to stay there to take care of her. The tenor of his deposition suggests that he hardly had any connection with his daughter and was unaware of the fact that she was being treated medically. The complainant also tried to feign his ignorance with regard to Rs.30,000/- given by the accused to his daughter Sangeeta. However, he did not think it necessary to call Sangeeta as a prosecution witness in support of such assertion.

35. The complainant's case is that he was informed of the harassment meted out to Reena over telephone from time to time. However, the complainant himself had no personal mobile phone. It has also not escaped the mind of this Court that no specific incident along with dates or approximate dates have been narrated by the complainant. Only some bald assertions have been made. It is really doubtful that complainant's daughter Reena used to call him on landline and only spoke about harassment by her in-laws who did not even reside with her and did not give any information regarding the medical treatments that she was

undergoing. The deposition of the complainant is highly improbable and does not reveal a correct statement of facts and does not inspire any confidence.

36. This Court notices that the accused was much better financially than the appellant, therefore, the question of harassing the deceased Reena for more dowry is not believed by this Court. The fact that the complainant had no affection for his grand child and has levied false complaint against the accused is borne out from the fact that he has neither accompanied his daughter for the medical treatments nor is he aware of the treatments she went through nor has taken any part in providing care to her or the grandchild when they were admitted at BPS Government Medical College for Women, Khanpur, Sonapat. He even did not find it necessary to visit the grandchild even once after the death of his daughter.

37. On the given facts and circumstances, the trial Court was justified in acquitting the accused. The judgment of trial Court is based on valid reasons. The prayer of Appellant for conviction of accused Anand is liable to be declined keeping in view the principles laid down by Hon'ble Apex Court. In **State of Karnataka v. K. Gopalakrishna** reported in "(2005) 9 SCC 291, wherein it has been held that where the findings of the Court below are fully unreasonable or perverse and not based on evidence on record or suffer from serious illegality and includes ignorance and misreading of record, the appellate Court will be justified in setting aside such order of acquittal but not otherwise.

38. In **Chandrappa v. State of Karnataka** reported in "(2007) 4 SCC 415", the Apex Court culled out general principles regarding powers of the appellate Court while dealing with an appeal against the order of acquittal. The principles are enumerated herein below :

"(1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial Court.”

39. Keeping in view the aforesaid discussion and the principles laid by Hon’ble Apex Court, this Court is of the view that there is no perversity at all in the judgment passed by the trial Court. The material on record including the evidence was discussed in detail and a well reasoned finding was arrived at. Therefore, the order of trial Court merits no interference at all.

40. Accordingly, the present appeal is dismissed. All the pending criminal miscellaneous applications, if any, also stand disposed of.

(G. S. SANDHAWALIA)
JUDGE

(LAPITA BANERJI)
JUDGE

DECEMBER 02, 2023
shalini

Whether speaking/reasoned : Yes
Whether reportable : Yes