

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.880 OF 2005

SANJIV KUMAR

...APPELLANT(S)

Versus

STATE OF PUNJAB

...RESPONDENT (S)

J U D G M E N T

B.P.SINGH, J.

The appellant herein has appealed by special leave impugning the judgment and order of the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No.482-SB of 1993 dated February 2, 2005 affirming his conviction under Section 304B and 498A of the Indian Penal Code (IPC) and affirming the sentence of rigorous imprisonment for seven years and two years respectively on those counts.

The sentences have been directed to run concurrently.

The facts of the case are that the appellant Sanjiv Kumar was

married to deceased Raj Rani about 4-1/2 months before the occurrence

which is alleged to have taken place on 24th August, 1991. The case of

2

the prosecution is that the matrimonial home of the deceased was at

village Gobindpura. Her parents resided at village Khadayal at a distance

of 150 kms. One of the brothers-in-law of the deceased namely Balwant

Rai is a resident of village Ghunder which is at a distance of about 5 kms.

from village Gobindpura. The case of the prosecution is that 15 days

after her marriage when the deceased came to village Khadayal she

complained to her family members that her husband - the appellant

herein, as also her in laws namely Sanjiv Kumar and Maya Devi (since

acquitted) and Mrs. Nirmala Devi, sister of the appellant (not sent up for

trial) maltreated her on the ground that she had not brought sufficient

dowry. They were pressing her to bring more dowry. The deceased was

sent back to her matrimonial home but when she came again after a

month, she again complained that the appellant and his sister had been

maltreating her and beating her off and on. She was again persuaded to go back to her matrimonial home. She again came to her father's village a month later and this time she was not sent back to her matrimonial home. Later, the appellant assured that the deceased would not be maltreated and therefore, it was agreed that the deceased shall accompany her husband to her matrimonial home. About twenty days prior to her death, the deceased complained to her family members that

3

she was not willing to stay in her matrimonial home as they were physically torturing her and maltreating her. On this, her brother PW-4 Ramesh Kumar went to village Gobindpura and brought her to village Khadayal. When he had come to village Gobindpura, he had noticed his sister being abused by the appellant and his sister and they were making a demand of a colour television and a refrigerator as also a sum of Rs.10,000/- on the pretext that they had to run a shop for the appellant. He assured them that he would send the amount to them as also the desired articles when they would be in a position to do so. However, the

deceased accompanied her brother to village Khadayal 20 days before the

occurrence. The case of the prosecution is that on 20th August, 1991 the

appellant came to village Khadayal and assured the family members of

the deceased that he would stay separately from his parents and that he

will establish his own shop and they should arrange a sum of

Rs.10,000/- for him. The deceased was not agreeable to the demand of

the appellant. In the meantime, Jeewan Kumar PW-6, one of the

neighbours came to their house and in his presence some discussion took

place. After staying for two days at Khadayal, the appellant left for

Govindpura but again came to the village on 23.8.1991 and persuaded

the deceased to accompany her. The deceased accompanied the appellant

4

and both of them left for village Gobindpura. PW-4 had assured the

appellant that he would come to village Govindpura on Sunday along with

Rs.10,000/- as agreed. The appellant retorted by saying that if he did

not come with the money on 25.8.1991 he may repent his sister's death.

On 24.8.1991 one Ram Sarup came and informed the family

members of the deceased that the appellant and his sister had

administered poison to the deceased and that the deceased was admitted in the Rajendra Hospital at Patiala. On getting this news he went to the hospital along with his father Wailaiti Ram PW-5 and his mother and reached the hospital at about midnight on 24.8.1991. They came to know that the deceased had expired. The police officer of Police Station Bhadson met PW-4 in Rajendra Hospital at about 8.00 A.M. on 25.8.1991 and recorded his statement on the basis of which a formal first information report was drawn up and ultimately the appellant along with his parents was put up for trial.

The Trial Court acquitted the parents of the appellant but found the appellant guilty of the offence under Section 304B and 498A IPC.

The defence case is that there was no demand for dowry nor was the deceased ever harassed or maltreated by the appellant or his family members. In his statement under Section 313 of the Code of Criminal

Procedure (Cr.P.C.), the appellant took up a categorical defence and stated that the deceased had illicit relations with her brother in law Balwant Rai of village Ghunder. On coming to know of it, the appellant had

objected to her visiting the house of Balwant Rai. It had come to his

notice that his wife as also his father in law and sister in law had been

going to village Ghunder to the house of Balwant Rai and they used to

stay there for sometime. He stated that a panchayat was convened and

this matter was discussed in the panchayat. On two occasions panchayat

was taken to village Khadayal. The members of the panchayat were

Mohinder Singh, Sarpanch (DW-2), Jit Singh, Roop Singh etc. They

asked the parents of the deceased not to permit the deceased to visit the

house of Balwant Rai. The deceased did not accept their advice. Ten

days before the occurrence he had gone to village Khadayal and was

returning to his village on 23.3.1991 along with the deceased. The

deceased insisted that she would stay for a night at the house of Balwant

Rai, her brother in law which was at a distance of about 5 kms. from her

matrimonial home Gobindpura. Though the appellant was not agreeable

to going to the house of Balwant Rai, she in spite of his opposition went

to the house of Balwant Rai and the appellant had to return to his village

alone. Next morning i.e. on 24.8.1991 when the deceased came to village

Gobindpura he questioned her as to why she had stayed at the house of

Balwant Rai. That resulted in a quarrel between the deceased on the one

hand and the appellant and his mother on the other. Thereafter,

according to the appellant, he went to irrigate his fields while his mother

went to the cattle shed. His father left for Nabha where he was employed.

While he was in his fields he was informed by Mohinder Singh, member

of the panchayat that his wife had consumed some poisonous substance

and therefore, he rushed to his house and removed the deceased to the

Primary Health Centre, Bhadson and thereafter to the Rajendra

Hospital, Patiala. In his statement under Section 313 Cr.P.C. the

appellant also stated that he had no desire to run any shop. They had

sufficient lands, about 30 bighas, which he used to cultivate. There was

no reason to demand a colour T.V., fridge or Rs.10,000/- from his father

in law. In fact, only on the 7th March, 1991 they had purchased a new

fridge and they had a black and white T.V. in their house even prior to

the marriage. The case therefore, set up by the prosecution that they

were demanding a T.V. set, a fridge and Rs.10,000/- to start a business

was false and only fabricated to falsely implicate the appellant and his

family members.

PW-4, the brother of the deceased and the informant of the case

7

deposed to the manner in which the appellant and his family members

used to treat his sister. The prosecution on the strength of his evidence

and that of his father Wailaiti Ram PW-5 sought to establish the demand

of dowry. PW-4 has been cross examined at length. The defence case was

put to this witness namely that the deceased had illicit relations with her

brother in law Balwant Rai and this was objected to by the appellant and

his family members and that panchayat was held and the members of the

panchayat came to village Khadayal and informed the father and other

family members of the deceased regarding the illicit relationship with a

request that the deceased should be prevented from going to the house of

Balwant Rai. He has denied this suggestion. He has further denied the

suggestion that on 23rd August, 1991 when the appellant along with his

wife (the deceased) was going to village Gobindpura, the deceased insisted

on going to village Ghunder to the house of Balwant Rai and in fact did

so even despite the opposition of the appellant and that this incident gave

rise to a quarrel next morning. The appellant had consumed poison in

this factual background.

The evidence of Wailaiti Ram (PW-5), father of the deceased is

to the same effect and the defence has put the same suggestions to t  
his

witness as well, which he has denied.

8

The defence examined DW-2 Mohinder Singh, Sarpanch in

support of his case. Mohinder Singh resides in his house in the

neighbourhood. He has deposed that the appellant was married to the

deceased in village Khadayal. The marriage was a simple marriage

ceremony and only chunni was put on the bride. Only 11 persons

constituted the barat party. Two months later, the parents of the

appellant had asked the deceased not to visit the house of Balwant Rai in

village Ghunder. A panchayat was also convened at the instance of the

father of the appellant. Kulwant Rai who had arranged the marriage as

a go between was also present in the panchayat and the panchayat

advised the deceased not to visit the house of Balwant Rai. 1-1/2 months

later another panchayat was convened for the same purpose and the

panchayat went to village Khadayal to the house of the parents of the

deceased when PW-5 father of the deceased assured them that he would

advise his daughter not to visit the house of Balwant Rai, her brother in

law. This witness claimed to have accompanied the deceased to the

hospital at Bhadson. According to this witness, the police had made

inquires from him as well as the appellant and they had also taken their

signatures on some papers. Since the condition of the deceased became

serious she was removed to the Rajendra Hospital, Patiala where she

9

died at about 4.30 P.M. The parents of the deceased reached Rajendra

Hospital, Patiala at about 5.00 P.M. According to this witness the

appellant had never demanded dowry nor made any demand for fridge or

T.V. which they already had even prior to the marriage. He also stated

that the appellant was an agriculturist owning 30 bighas of land and the

father of the appellant was also an employee of the Punjab Electricity

Board at Nabha.

Having regard to the evidence on record, the question arises as to

whether the prosecution has proved its case beyond reasonable doubt.

Under Section 304B IPC the prosecution is required to establish that the

death was caused by any burn or bodily injury or occurred otherwise than

under normal circumstances, that such death took place within 7 years of

the marriage, and that it is shown that soon before her death the woman

was subjected to cruelty or harassment by her husband or any relative of

her husband for or in connection with any demand for dowry . If these

facts are established by the prosecution, the presumption under Section

113B arises and the Court shall presume that such person who had

subjected the woman to cruelty or harassment in connection with any

demand for dowry shall be presumed to have caused the dowry death.

The presumption that arises in such cases may be rebutted by the

10

accused. If the accused successfully rebuts the presumption by pleading

and proving a probable defence, the presumption under Section 313B

stands rebutted and the prosecution must prove its case without the aid of

such presumption. It must logically follow that in a case where such presumption arises, the evidence oral, circumstantial or documentary adduced in defence must be examined by the Court with a view to find whether the presumption stands rebutted. It is essentially a matter of appreciation of evidence.

In the instant case, there is no doubt that there is evidence to suggest that the deceased was subjected to harassment and cruelty by the appellant and his family members in connection with demand of dowry.

The evidence of PWs. 4, 5 and 6 do support the case of the prosecution in this regard. It is, however, contended on behalf of the appellant that though these witnesses have made such allegations, the allegations are not true. In the first instance, it was submitted that the family of the appellant is relatively more prosperous than the family of the deceased.

There is no allegation that any dowry was demanded at the time of marriage. The defence evidence also proves that the marriage ceremony was a simple ceremony where only the chunni ceremony was performed

with only 11 or 17 persons constituting the barat. It was further

11

contended that the family of the appellant has considerable landed

property, about 30 bighas of land and they are agriculturists. That apart

the father of the appellant was employed with the Electricity Board at

Nabha. The appellant had no reason to demand Rs.10,000/- for

supporting a shop because he did not intend to start any such shop nor

was there any necessity to do so. So far as demand of a fridge is

concerned, only three weeks before the occurrence they had purchased a

new fridge and therefore, the allegation regarding demand of articles and

Rs.10,000/- appear to be false. Even before the marriage, the appellant

had in his house a black and white T.V. and therefore, there was really

no need for the appellant to demand a T.V. In any event, in these

circumstances, it does not appear probable that for such petty things the

appellant would commit the murder of the deceased. The learned counsel

therefore, argued that the prosecution evidence regarding demand of

dowry must be rejected outright. There is no evidence to establish that

such a complaint was ever made to anyone before the occurrence, nor had

the parents of the deceased convened any panchayat making such a grievance, particularly in the background of the fact that the family of the appellant had twice convened panchayat and had even taken the panchayat members to the village of the deceased to complain about her

12

conduct. It was, therefore, submitted that Section 304B was not attracted

to the facts of this case. It may be that the deceased committed suicide

after she had a serious quarrel with her husband for her having stayed

for the night at the house of Balwant Rai with whom the husband

suspected her illicit relationship.

We cannot lose sight to the principle that while the prosecution

has to prove its case beyond reasonable doubt, the defence of the accused

has to be tested on the touchstone of probability. The burden of proof

lies on the prosecution in all criminal trials, though the onus may shift to

the accused in given circumstances, and if so provided by law.

Therefore, the evidence has to be appreciated to find out whether the

defence set up by the appellant is probable and true.

We have earlier noticed the evidence on record which suggests that the appellant suspected the deceased of having an illicit relationship with her brother in law Balwant Rai. The matter did not remain in the realm of suspicion, because the father of the appellant twice convened panchayats where this grievance was raised and considered by the members of the panchayat who advised the deceased not to visit the house of Balwant Rai. On one occasion the panchayat members went to the village Khadayaal and met the family members of the deceased and secured

13

an assurance from the father of the deceased PW-5 that she will be advised not to visit Balwant Rai, her brother in law. The appellant in his statement recorded under Section 313 Cr.P.C. stated that while returning to his village on 23rd August, 1991 the deceased insisted on going to village Ghunder which he opposed, but despite his opposition she went to the village of Balwant Rai and stayed for the night at village Ghunder . When she returned next morning to village Gobindpura the appellant protested against her behaviour and that resulted in a quarrel between

the two. The case pleaded by the appellant, while explaining the circumstances appearing against him under Section 313 Cr.P.C. cannot be said to be an after thought, because the defence suggestions were put to the relevant witnesses when they appeared in the witness box. It has been observed that defence witnesses are often untruthful, but that is not to say that in all cases defence witnesses must be held to be untruthful, merely because they support the case of the accused. The right given to the appellant to explain the incriminating circumstances appearing against him serves a purpose, and cannot be ignored outright. In every case the Court has to see whether the defence set up by the accused is probable, having regard to the totality of the facts and circumstances of the case. If the defence appears to be probable, the Court may accept

14

such defence. This is primarily a matter of appreciation of evidence on record and no strait jacket formula can be enunciated in this regard.

Unfortunately, the defence of the appellant and the evidence adduced by him, has not even been considered by the High Court. It was content with observing that the Trial Court rejected the defence case as

there was no evidence to substantiate it. Moreover, the evidence of the same witnesses as against the parents of the appellant was not believed, and his parents were acquitted by the Trial Court. The non consideration of the defence case by the High Court has resulted in miscarriage of justice, particularly because the conviction of the appellant is sought to be sustained on the strength of a presumption drawn against him by law. In such a case the consideration of the evidence in rebuttal becomes even more significant.

Coming to the facts of this case we find that the defence set up by the appellant appears to be probable and sufficient to rebut the presumption against him. Apart from the appellant, DW-2 Mohinder Singh, Sarpanch who was a member of the panchayat deposed in favour of the appellant. These facts cannot be ignored altogether. On the touchstone of probability, and having regard to the facts of this case, the defence of the appellant appeals to us to be probable. It cannot be lost

sight of that the conviction of the appellant is based on the presumption

drawn against him. There is no direct evidence to prove that he had administered any poisonous substance to the deceased. In all probability she had committed suicide. Ultimately, it is a matter of appreciation of evidence, and while we cannot say that the case of the prosecution is proved to be untrue, it is equally possible on the basis of the evidence on record to take the view that the defence case may also be true. Thus, applying the well established principle that if on the basis of the same evidence, two views are reasonably possible, the one in favour of the accused should be preferred, we allow this appeal giving the benefit of doubt to the appellant.

Accordingly, this appeal is allowed. The judgment and order of the High Court is set aside and the appellant is acquitted of the charges levelled against him. The appellant is in custody. He shall be released forthwith unless required in any other case.

.....J.

(B.P.SINGH)

.....J.

(TARUN CHATTERJEE)

New Delhi,

November 7, 2006

ITEM NO.102

COURT NO.6

SECTION IIA

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 880 OF 2005

SANJIV KUMAR

Appellant (s)

VERSUS

STATE OF PUNJAB

Respondent(s)

(With office report )

Date: 07/11/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.P. SINGH

HON'BLE MR. JUSTICE TARUN CHATTERJEE

For Appellant(s)

Ms. Kawaljit Kochar, Adv.

Mr. D.Jha, Adv.

Ms. Kusum Chaudhary, Adv.

For Respondent(s)

State of Punjab

Mr. Sanjay Jain, Adv.

Mr. Mukesh Kumar, Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is allowed in terms of the signed judgment and order of the High Court is set aside and the appellant is acquitted of the charges levelled against him. The appellant is in custody. He shall be released forthwith unless required in any other case.

(Sukhbir Paul Kaur)

(Vijay Dhawan)

Court Master

Court Master

(Signed judgment is placed on the file)