

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1834 OF 2010

RAJIV DAWAR

Appellant

VERSUS

THE STATE OF PUNJAB

Respondent

O R D E R

Heard Mr. Siddhartha Dave, learned senior counsel appearing for the appellant. Ms. Rooh-e-hina Dua, learned counsel appears for the respondent-State of Punjab. Submission on behalf of the informant, who is the intervenor here, is made by Mr. Gagan Gupta, learned counsel.

2. This appeal arises out of the decision dated 13.05.2010 in Criminal Appeal No. 670-SB of 1999 whereby the High Court of Punjab and Haryana had upheld the judgment of the learned sessions Judge, Patiala whereby the appellant was convicted under Section 304-B of the Indian Penal Code, 1860 (IPC) and was sentenced to undergo rigorous imprisonment for seven years with a fine of Rs.50,000/- and in default thereof, he was sentenced to further undergo rigorous imprisonment for one year.

3. The case, according to prosecution, is that on 14.02.1993, the appellant got married to the deceased and within few months of the marriage, on 19.08.1993, the wife of the appellant consumed poison in the matrimonial home and died thereafter. At around 7 p.m., the brother of the appellant informed the deceased's father about admission of the deceased in the hospital at Patiala and when the

parents of the deceased reached the hospital, they found her dead. It is alleged that the deceased remained tensed in her matrimonial home as she was being mistreated on account of dowry demand and, in fact, it is also alleged that on 12.05.1993, the deceased and the appellant called on the deceased's parents and on their demand, the father of the deceased paid Rs.5,000/-. Subsequently, on 07.08.1993, a further sum of Rs.5,000/- was given and later on, on 11.07.1993, another sum of Rs.5,000/- was given to the appellant and the last amount had to be borrowed by the deceased's father from his friend. The other material, as brought forth by the prosecution is that on 18.08.1993, a day before the incident, the deceased's sister visited the deceased, when the deceased confided in her sister that she apprehend danger to her life from her in-laws. However, she told her sister not to disclose this fact to her parents. The sister conveyed this information to her father only after the deceased died.

4. Assailing the legality of the conviction judgment, Mr. Siddhartha Dave, the learned senior counsel firstly submits that on the basis of the very same evidence, although the parents of the appellant were also charged for the crime under Section 304 IPC read with Section 34 IPC, acquittal of the in-laws of the deceased was ordered by the Court but on some cryptic reasoning, the culpability of the appellant under Section 304-B IPC on account of the unnatural death of the deceased is found to have been established.

4.1 The learned senior counsel would then advert to suicide notes (Ex.D-18 and Ex.D-19) written in the handwriting of the deceased,

to point out that the deceased blamed herself and her mental state for taking her own life and, in fact, she had written categorically in her suicide note that none is to be held responsible for her death. The findings recorded by the trial court as also by the High Court that the death of the deceased was the result of two factors, one harassment at the hands of the appellant and the other, her mental state of mind, are of such nature which under the acceptable rules of presumption under Section 304-B IPC would not be attracted here inasmuch as the harassment either by the appellant or the in-laws are not established by the prosecution through any of their evidence. Only thing that is revealed from the evidence of Dharam Parkash Kaushal (PW-2), the father of the deceased and Bindu Kaushal (PW-5), sister of the deceased was that the deceased suffered harassment from her in-laws but it is nobody's case that the harassment suffered is related to dowry demand by in-laws or by the appellant.

5. *Per Contra*, Ms. Rooh-e-hina Dua, the learned State counsel would contend that when conviction is handed out under Section 304-B IPC, presumption under Section 113B of the Indian Evidence Act, 1872 (for short, the "Evidence Act") is attracted and this being the case where the appellant had failed to discharge the burden of proof, the concurrent judgment of the trial court and the High Court should be left undisturbed.

5.1 The State counsel would next rely on the ratio in *Gurmeet Singh v. State of Punjab*, (2021) 6 SCC 108, to argue that in similar circumstances, this Court approved the conviction under Section 304-B IPC and this case should not be an exception having

regard to the law laid down in *Gurmeet Singh*.

6. From the side of the informant, Mr. Gagan Gupta, learned counsel additionally submits that burden of proof under Section 106 of the Evidence Act has to be discharged by the accused when he is charged under Section 304B of the IPC and in the instant case, neither in the statement under Section 313 Cr.P.C. nor in any defence evidence, such burden has been discharged.

7. Section 304-B IPC is attracted only in case of dowry death and the section itself defines dowry death by stating that it is the unnatural death of a woman within seven years of marriage and it must be shown that before her death, she was subjected to cruelty or harassment by her husband or any relative of her husband in connection with demand for dowry.

8. As noted earlier, present one is undoubtedly a case of unnatural death as the deceased consumed poison which led to her death and the death had occurred within few months of her marriage which took place on 14.02.1993. However, the next key ingredient of the deceased being subjected to cruelty or harassment in connection with demand for dowry must necessarily will have to be proved in order to sustain the conviction under Section 304-B IPC.

9. The in-laws of the deceased who too were charged together with the appellant were exonerated by the Court on the ground that the precise role that may have been played by them in the preceding months leading to the death are not discernible. In this context, the evidence of Dharam Parkash Kaushal (PW-2) and Bindu Kaushal (PW-5), the father and the sister of the deceased respectively, would bear closer scrutiny. Dharam Parkash Kaushal (PW-2) in his

testimony stated that the deceased conveyed that her in-laws would kill her and this fact was disclosed by him to the police. Likewise, Bindu Kaushal (PW-5) in her testimony stated that the deceased had told her for the first time on 18.08.1993, a day before she died, that her in-laws would kill her. If this be the evidence in the case and the in-laws of the deceased were exonerated despite such evidence, it is difficult to understand how the benefit of doubt should also not have been given to the appellant by the courts below.

10. The next aspect that deserves consideration is the suicide notes left behind by the deceased which are marked as Ex.D-18 and Ex.D-19. The trial court and the High Court concluded the suicide notes to be genuine and in the handwriting of the deceased and it is specifically stated that there is no hesitation in holding that the Hindi script marked as Ex.D-19 is in the handwriting of the same person who wrote the Hindi entries in the diary, the identity of that person is none other than deceased herself. However, the Court went on to interpret the suicide notes as one that would lead to a conclusion that the deceased committed suicide on the ground of matrimonial harassment and dowry demand.

11. The suicide notes written in the handwriting of the deceased would read as under:

“ Respected Sir,

Please hand (*sic*) over my 18 days pay to my husband Mr. Rajiv Dawar, for your (*sic*) confirmation I am giving you my signatures.

Kiran Dawar”

(My School Keys be given to the Computer Teacher in the morning).

Kiran

I am responsible for my own death. No body has a hand in it. I apologies from all of you for taking this step, but I had no other alternative way excepting this. I tried very hard, but could not get rid of my madness. And I have done this. Mummy I have some money which I am leaving for you. From this you may donate some money in my name to Shanti Kunj. Now from my side I bow to all of you many times. Fielding

Yours Unlucky daughter
(Kiran Dawar)"

12. The first note written in the handwriting of the deceased would suggest that the deceased enjoyed cordial relationship with her husband - the appellant herein. In the next note, the deceased makes it clear that nobody is to be blamed for her death and although she tried very hard, she could not get rid of the disturbance in her mind. If the appellant was harassing the deceased as is suggested by the prosecution, the suicide notes in the manner it is written, is unlikely to have been written by the deceased just before her death. Those should therefore be read as also exoneration of the appellant by the deceased and if interpretation of the suicide notes are to be understood in two ways, the interpretation which should be advantageous to the accused must be accepted.

13. Having examined the materials on record, it must be observed that the prosecution has not brought forth any evidence to prove cruelty and harassmt of the deceased in the matrimonial home soon

before her unnatural death by suicide. None of the neighbors or relatives were examined to show that the deceased was facing dowry related harassment in the matrimonial home. Taking these factors into account, we are of the clear opinion that the benefit of doubt must be given to the appellant who has been found guilty on charge of causing dowry death of his wife under Section 304-B IPC.

14. Having reached such conclusion, we find merit in this appeal and accordingly ordering acquittal of the appellant, we allow the appeal. Consequently, the impugned judgment dated 13.05.2010 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 670-SB of 1999 confirming the conviction and the consequential sentence imposed by the Court of Sessions Judge, Patiala in S.C. No. 29-T of 1998 (S.C. No. 29-T of 6.6.1998/31.10.1994) is set aside. As the appellant is on bail, the bail bonds shall stand discharged.

.....J.
(HRISHIKESH ROY)

.....J.
(C.T. RAVIKUMAR)

NEW DELHI;
FEBRUARY 22, 2023

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. 1834/2010

RAJIV DAWAR

Appellant

VERSUS

THE STATE OF PUNJAB

Respondent

(I.A. NO. 69290/2018 - application for intervention)

Date : 22-02-2023 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE HRISHIKESH ROY
HON'BLE MR. JUSTICE C.T. RAVIKUMARFor Appellant(s) Mr. Siddhartha Dave, Sr. Adv.
Mr. Prastut Dalvi, Adv.
Ms. Vidhi Thaker, Adv.
Mr. Sudarshan Singh Rawat, Adv.
Mr. Sanjay Jain, AORFor Respondent(s) Ms. Rooh-e-hina Dua, AOR
Mr. Harshit Khanduja, Adv.

Mr. Gagan Gupta, AORUPON hearing the counsel the Court made the following
O R D E RI.A. No. 69290 of 2018, application for intervention is
allowed.

The appeal is allowed in terms of the signed order.

The operative part of the order reads thus:

"14. Having reached such conclusion, we find merit in this appeal and accordingly ordering acquittal of the appellant, we allow the appeal. Consequently, the impugned judgment dated 13.05.2010 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 670-SB of 1999 confirming the conviction and the consequential sentence imposed by the Court of Sessions Judge, Patiala in S.C. No. 29-T of 1998 (S.C. No. 29-T of 6.6.1998/ 31.10.1994) is set

aside. As the appellant is on bail, the bail bonds shall stand discharged.”

Pending application(s), if any, shall stand disposed of.

(NITIN TALREJA)
COURT MASTER (SH)

(KAMLESH RAWAT)
COURT MASTER (NSH)

(Signed order is placed on the file)