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Court : Delhi

Decided On : Mar-09-2016

Judge : G.S. Sistani & The Honourable Ms. Justice Sangita Dhingra Sehgal

Appeal No. : Criminal Leave Petition No. 158 of 2016

Appellant : Jagbir Singh

Respondent : State and Others

Advocate for Pet/Ap. : Mr. Rakesh Sharma

Judgement :

G.S. Sistani, J.

Oral:

1. The present Criminal Leave Petition has been filed under section 372 of the Code of Criminal Procedure by the Appellant seeking leave to appeal against the impugned order dated 11.12.15 passed by learned Additional Sessions Judge, (South-West)-02 Dwarka Courts, New Delhi in Sessions Case No. 69/13.

2. The material facts relevant and necessary for disposal of the present leave petition are that on 01.06.2013, on receipt of an information regarding admission of injured Manisha, SI Rajesh along with Ct. Hari Mohan reached Balaji hospital, where she was declared unfit for statement. SI Rajesh reached at the spot of

occurrence i.e. village Jharoda Kalan, where the crime team was called and inspected the spot. Since the incident took place within seven years of marriage of the injured, SDM was also informed, who recorded the statement (Ex.PW1/DA) of Jagbir Singh, father of Manisha wherein no allegations were made against the in-laws of Manisha. On 02.06.2013, the injured Manisha died and her dead body was sent to RTRM Hospital, Jafarpur to conduct the postmortem. On 03.06.2013, the statement (Ex.PW1/A) of Jagbir Singh was again recorded wherein he accused the in-laws of the deceased and held them responsible for her death. On the basis of his statement Ex. PW1/A, FIR was registered against the accused persons.

3. After investigation, police filed a charge sheet under Section 498A read with Section 34 of the Indian Penal Code and Section 304B read with Section 34 of the Indian Penal Code (or in the alternative under Section 302 read with Section 34 of the Indian Penal Code) and charges were framed against the accused persons for the said offences to which they pleaded not guilty and claimed trial.

4. To bring home the guilt of the accused persons, prosecution examined 26 witnesses in all. The statement of the accused persons were recorded under Section 313 of the Code of Criminal Procedure wherein they reiterated their innocence and examined three witnesses in their defence.

5. The Trial Court after considering the arguments addressed by the counsel for the parties and evidence adduced by them, acquitted the accused persons by concluding that the prosecution had failed to prove the guilt of the accused persons beyond reasonable doubt.

6. Assailing the impugned judgment, Mr. Rakesh Sharma, learned counsel for the Appellant contended that since the findings recorded by the trial court were perverse based on surmises and conjectures and on erroneous appreciation of evidence resulting in flagrant miscarriage of justice, the impugned judgment can not be sustained in law. He further contended that the deceased died within seven years of her marriage otherwise than under normal circumstances and thus she was either subjected to cruelty before her death or in the alternative she was murdered. The learned counsel vehemently argued that the trial court had turned a blind eye to the nature and number of the injuries sustained by the deceased. In

addition to this, the blue ink impression on her right thumb had been overlooked. It is further contended that the accused persons caused the evidence of the commission of the said offence to disappear by cleaning the floor where blood of deceased was lying thereby having the intention to screen themselves from legal punishment.

7. Before delving into the merits of the case, we deem it appropriate to discuss the relevant provisions involved in the present case. Section 304B reads as under:

304-B - (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation - For the purposes of this Sub-section, "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

8. In *Raman Kumar v. State of Punjab*, (2009) 16 SCC 35, Hon'ble Supreme Court observed :

"13. The provision has application when death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relatives of her husband for, or in connection with any demand for dowry. In order to attract application of Section 304B IPC, the essential ingredients are as follows:

(i) The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance.

- (ii) Such a death should have occurred within seven years of her marriage.
- (iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.
- (iv) Such cruelty or harassment should be for or in connection with demand of dowry.
- (v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

As per the definition of "dowry death" in Section 304B IPC and the wording in the presumptive Section 113B of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the woman concerned must have been "soon before her death" subjected to cruelty or harassment "for or in connection with the demand for dowry". Presumption under Section 113B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials:

- (1) The question before the court must be whether the accused has committed the dowry death of a woman, (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304B IPC.) .
- (2)The woman was subjected to cruelty or harassment by her husband or his relatives.
- (3) Such cruelty or harassment was for, or in connection with any demand of dowry.
- (4) Such cruelty or harassment was soon before her death.

16. A conjoint reading of Section 113B of the Evidence Act and Section 304B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the "death occurring otherwise than in normal circumstances". The expression "soon

before" is very relevant where Section 113B of the Evidence Act and Section 304B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led in by the prosecution. "Soon before" is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113B of the Evidence Act. The expression "soon before her death" used in the substantive Section 304B IPC and Section 113B of the Evidence Act is present, with the idea of proximity test. No definite period has been indicated and the expression "soon before" is not defined. A reference to the expression "soon before" used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who is in the possession of goods soon after the theft, is either the thief who has received the goods knowing them to be stolen, unless he can account for his possession. The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence."

9. In *Amar Singh v. State of Rajasthan*, (2010) 9 SCC 64, Hon'ble Supreme Court observed:

29...What is punishable Under Section 498-A or Section 304-B Indian Penal Code is the act of cruelty or harassment by the husband or the relative of the husband on the woman. It will be also clear from Section 113-B of the Evidence Act that only when it is shown that soon before her death a woman has been subjected by any 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 within the meaning of Section 304-B Indian Penal Code. The act of subjecting a woman to cruelty or harassment for, or in connection with, any demand for dowry by the accused, therefore, must be established by the prosecution for the court to presume that the accused has caused the dowry death.

10. The law as it exists now provides that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within 7 years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative for or in connection with any demand of dowry, such death shall be punishable under Section 304B of the Indian Penal Code.

11. To prove the accusation against a person for the offence of dowry death, the prosecution is obliged to prove that :

(a) the death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances;

(b) such death should have occurred within 7 years of her marriage;

(c) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband;

(d) such cruelty or harassment should be for or in connection with the demand of dowry; and

(e) the deceased should have been subjected to such cruelty or harassment soon before her death.

12. The two ingredients of Section 304B of the Indian Penal Code are answered in the affirmative as it is not in dispute that firstly the death of the deceased was within seven years of her marriage and secondly was otherwise than under normal circumstances.

The questions we need to ponder upon are as to-

1. Whether the deceased was subjected to harassment or cruelty at the instance of her husband or any relative of her husband?
2. If answer to the first question appears to be in affirmative, whether that harassment or cruelty was in connection with the demand of dowry?
3. Such cruelty or harassment should have been subjected to soon before death.

13. The answer to the first two questions appears to be inextricably linked with the third question. Undoubtedly, there is no eye witness to the occurrence. The entire case of the prosecution rests upon the testimonies of PW1, father of the deceased and PW2, maternal aunt of the deceased.

14. In order to prove that the deceased was subjected to harassment and cruelty in connection with the demand of dowry soon before her death , the testimony of father of the deceased assumes importance. In the initial statement recorded by Sub Divisional Magistrate on 01.06.2013, father of the deceased did not level any allegations against the accused persons. However, when on 02.06.2013 his daughter Manisha died and his statement was again recorded on 03.06.2013 by the Sub Divisional Magistrate he accused the husband and in-laws of Mansiha of harassing and torturing her daughter for meeting their unlawful demands of dowry and held the accused persons responsible for the death of his daughter. This witness stepped into the witness box as PW1 before the Court and deposed on oath that :

"The marriage of my daughter Mansiha was solemnized with accused Krishan Dagar on 29.04.2013. All the customary dowry items were given in marriage to the accused and his parents i..e accused Kapoor Singh and Shakuntala. All the accused persons used to harass and tortured my daughter after marriage. My daughter Manisha had informed my sister in law Mukesh (her mausi) regarding the harassment and torture. Mukesh had told this fact to me. I was planning to go to the house of accused persons along with 20-30 persons of our side to discuss the issue with the accused persons, but during this period, accused persons killed my daughter.

On the night intervening 31.05.2013-1.06.2013 at about 2.00 am I received a call from middle man Kale that my daughter had fallen from the Chhajja (balcony). I suspected that accused Krishan and his parents and his parents and his brothers and sisters had pushed my daughter from Chhajja. My daughter had stayed in the house of accused persons for 15 days. Wife of my younger brother told to me that no physical relations had ever taken between my daughter and accused Krishan. "

15. Mukesh, the maternal aunt of the deceased appeared as PW2 and deposed :

"On 29.04.2013, the marriage of my maternal niece Manisha was solemnized with accused Kishan, present in the Court (Correctly identified) with Hindu Custom and rites. Initially, she was happy in her matrimonial house. On 19.05.2013, Manisha had returned to her parental house. On 27.05.2013 she returned to her matrimonial house with accused Kishan. On being asked, she had told that by that time she had not physical relation with her husband but she asked to me not to disclose this fact to anybody. On 31.05.2013 Manisha telephoned me in afternoon at about 12 p.m and told me that her in laws were harassing her for dowry. I had informed the father of Manisha in this regard on 01.06.2013, On the night of 31.05.2013, Manisha died. Police did not record my statement. Again said, I was called by police and I had told above said facts to the police."

16. The prosecution has mainly relied upon the testimonies of these two witnesses to establish the guilt of the accused persons. However, there are glaring and irreconcilable contradictions in their testimonies. According to PW-2 Smt. Mukesh, she had informed her brother-inlaw (PW1) about the telephonic conversation she had with Manisha about the harassment meted out to her for unlawful demands of dowry by her in-laws on 01.06.2013 at about 3-4 PM and PW1 told her that he would discuss this issue with the parents of the husband of the deceased. In total contradiction, PW1 deposed in Court that he had no discussion with PW2 on 01.06.2013.

17. In the instant case, none of the witnesses deposed that the deceased had been subjected to cruelty or harassment or dowry had been demanded from her soon before her death?. Analysis of testimonies of PW1 and PW2, who are interested witnesses shows that the alleged demand of dowry are general and not

specific. No specific incident has been ascribed by any of the witnesses to suggest the cruelty and harassment extended by the respondents. The allegations levelled by these two witnesses are hearsay which are not admissible in law. Moreso, there are glaring inconsistencies and contradictions in their testimonies too.

18. The contention of the learned counsel for the appellant is that the trial court failed to appreciate the postmortem report and did not consider the number and nature of injuries and the ink impression on the left thumb of the deceased and that the accused persons had tried to extinguish the evidence by clearing of the floor where the blood of Manisha was lying in order to evade criminal liability are not well founded.

19. In *Rajiv Singh v State of Bihar and Anr.* reported in (2015) SCC Online SC 1336, the cardinal principles governing the criminal jurisprudence were discussed. The Hon'ble Apex Court held that :

"It is well entrenched principle of criminal jurisprudence that a charge can be said to be proved only when there is certain and explicit evidence to warrant legal conviction and that no person can be held guilty on pure moral conviction. Howsoever grave the alleged offence may be, otherwise stirring the conscience of any court, suspicion alone cannot take the place of legal proof. The prosecution case to succeed has to be in the category of must be and not may be . The court has to essentially undertake an exhaustive and analytical appraisal of the evidence on record and register findings as warranted by the same."

20. Perusal of the postmortem report suggests that 21 external injuries were found on the body of the deceased. Maximum numbers of injuries were found on the right side of the body out of which injury No. 1 Stitched lacerated wound 5.5cm x 2cm, present over right parietal region of scalp, with multiple stitches present in situ, situated 7 cm above right ear, 1cm away from midline and 15 cm above nape of neck. On removal of stitches, stellate shaped lacerated wound was present measuring 7.2 cm x 5cm (with wound gaping of size 2cm) x periosteum deep. The margins of wound were irregular and tissue bridges were present at the base. Upper edge of the wound was undermined and a pocket was formed measuring 3 cm in size. Another pocket of size 2.5 cm was present at the lower edge of wound,

was the reasons for her death. Postmortem of the deceased was conducted by the Medical Board of doctors who opined that Death in this case occurred as a result of cranio-cerebral damage consequent upon blunt force trauma to head via injury No. 1 which is sufficient to cause death in the ordinary course of nature. Injury No. 1 is caused by a high velocity impact against a fixed surface, consistent with having occurred in a fall. All the injuries are ante mortem in nature, consistent with being about 3 days in duration, caused by blunt force, and are consistent with having occurred in a fall. It is worthwhile to mention herein that Dr. Anju Rani, Member of the Medical Board who appeared as PW5 before the Court admitted that there was a possibility of injuries sustained by the deceased due to fall of the deceased from roof caused by loss of balance/imbalance.

21. However, PW23 V. Lakshmi Narasimhan, Senior Scientific Officer Physics, FSL Rohini, has also been asserted to prove the guilt of the accused persons and deposed that :

"On the basis of request I along with Dr. Rajesh Kumar SSA Physics and S. Kunal LA (Photo) and S. Kushalender LA Physics visited the scene of occurrence i.e. the house at Jhoranda Kala on 26.8.2013 noticed the following observations. It was observed that there was no possibility of accidental fall from the second floor of the building in normal condition."

22. In Tota Singh and Anr. v. State of Punjab reported in AIR 1987 SC 108, the Hon'ble Supreme Court made the following observation:

6.Where two views are possible on an appraisal of the evidence adduced in the case and the Court below has taken a view which is a plausible one, the Appellate Court cannot legally interfere with an order of acquittal even it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous.

23. In Govindaraju @ Govinda v. State by Sriramapuram P.S. and Anr. AIR 2012 SC 1292, the Hon'ble Supreme Court discussed the law while dealing with appeals against acquittal in the following words:

13. 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 the 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..

24. In *State of Maharashtra v. Fazal Rehman Abdul* reported in 2013 (4) SCALE 401, the Hon'ble Apex Court held that

"This Court has laid down parameters for interference against the order of acquittal time and again. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate Court may be the more probable one. While dealing with a judgment of acquittal, the appellate Court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. The appellate Court is entitled to consider whether in arriving at a finding of fact, the trial Court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. In exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse,

the appellate Court can interfere with the order of acquittal. The appellate Court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other is possible should be avoided, unless there are good reasons for interference. The findings of fact recorded by a Court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality.

25. In a recent case *Upendra Pradhav v. State of Orissa*, (2015) 5 SCALE 634, the Apex Court has observed that :

10.We are of the view that in case there are two views which can be culled out from the perusal of evidence and application of law, the view which favours the accused should be taken. It has been recognised as a human right by this Court. In *Narendra Singh and Anr. v. State of M.P.*, (2004) 10 SCC 699, this Court has recognised presumption of innocence as a human right and has gone on to say that:

30. It is now well settled that benefit of doubt belonged to the accused.

It is further trite that suspicion, however grave may be, cannot take place of a proof. It is equally well settled that there is a long distance between 'may be' and 'must be'.

31. It is also well known that even in a case where a plea of alibi is raised, the burden of proof remains on the prosecution. Presumption of innocence is a human right. Such presumption gets stronger when a judgment of acquittal is passed.

This Court in a number of decisions has set out the legal principle for reversing the judgment of acquittal by a Higher Court (see *Dhanna v. State of M.P.*, *Mahabir Singh v. State of Haryana* and *Shailendra Pratap v. State of U.P.*) which had not been adhered to by the High Court.

33. We, thus, having regard to the post-mortem report, are of the opinion that the cause of death of Bimla Bai although is shrouded in mystery but benefit thereof must go to the Appellants as in the event of there being two possible views, the one supporting the accused should be upheld. (Emphasis Supplied)

11. The decision taken by this Court in the aforementioned case, has been further reiterated in *State of Rajasthan v. Raja Ram*, (2003) 8 SCC 180, wherein this Court observed thus: Generally the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to re appreciate the evidence in a case where the accused has been acquitted, or the purpose of ascertaining as to whether any of the accused committed any offence or not. (see *Bhagwan Singh v. State of M.P.*) The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference.

(Emphasis supplied)."

26. We may notice that the testimonies of PW1 and PW2 are highly unsafe to take a different view than taken by the Trial Court for the reasons that the father of the deceased made no allegation against the in-laws of the deceased in the first instance. The incident had taken place in the intervening night 31.05.2013/01.06.2013, however, it is only after she died on 02.06.2013, he got an FIR registered against the in-laws of the deceased alleging that they had been harassing and torturing his daughter for dowry. Moreso, the allegation for demand

of dowry was not made in specific terms nor there is any evidence from which it can be inferred that the deceased had been subjected to cruelty and harassment or dowry had been demanded from her "Soon before her death".

27. The case of the prosecution stood demolished as the testimonies of PW1 and PW2 stood contradicted with the testimony of PW4 Imrati Devi, aunt of the accused Krishan Dagar who deposed that "Accused Dagar present in Court today is son of my brother-in-law (Dever). Deceased Manisha was his wife. ON 31.03.2013, I was sleeping in my room and at about 12 night in the same house, where the accused persons were also residing. I heard some noise and on this I woke up and saw that Manisha was lying on the floor and there was bleeding on his head. Thereafter, I got woke up the family members of accused and Manisha was taken to hospital." During cross examination this witness categorically deposed that "I never saw any quarrel between Manisha and her in-laws including accused Krishan Kumar. She was very happy with her in laws including Krishan Kumar. Manisha used to touch my feet as a customary rituals. On the day of occurrence she also met me and was very happy.""

28. The testimonies of the witnesses, showing several contradictions, have already been projected herein above, would go to show that their testimonies do not inspire confidence in its truthfulness and correctness and cannot be relied upon.

29. As far as nature of injuries mentioned in the postmortem report and the opinion of PW23 are concerned, both are contradictory to each other and the opinions are in opposite directions to reach any definite conclusion.

30. It is well settled that where two views are reasonably possible on the basis of the evidence on record, the one that favours the accused must be accepted. In any event in a case of acquittal if the view of the trial court is a possible reasonable view as per the evidence on record, interference by the High Court may not be justified.

31. Keeping in view the aforesaid settled law and discussion, we are of the view that in the instant case, the essential ingredients of Sections 304-B/498-A/302 of

the Indian Penal Code are not established beyond all reasonable doubts against the respondents.

Accordingly, present leave petition stands dismissed.

Petition dismissed.

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