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GOVINDARAJU

v.

STATE OF KARNATAKA
(Criminal Appeal No. 570 of 2003)

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MAY 29, 2009

[V. S. SIRPURKAR AND R.M. LODHA, JJ.]

Penal Code, 1860 – s.304B – Death of woman within seven years of marriage – Demand of dowry and cruelty
C *alleged – Charges u/s. 302, 304B, 201 r/w. 34 IPC – Acquittal by trial court – Conviction of husband u/s. 304B by High Court – On appeal, held: Demand and payment of dowry and dowry harassment, cruelty meted out to the deceased and her unnatural death proved – High Court order justified – The*
D *case is covered by the presumption u/s. 113B of Evidence Act – Evidence Act, 1872 –s. 113B.*

Appeal – Power of appellate court – Review of evidence – Permissibility – Held: The court has full power to review the evidence and to arrive at its own independent conclusion either in appeal against conviction or acquittal.

Appellant-accused alongwith his parents and brother was alleged to have killed his wife (deceased). One of the accused died before framing of the charges. Charges
F *were framed u/ss. 302, 304B, 201 r/w s.34 IPC. One of the remaining three accused died during trial. Trial Court acquitted both the accused. High Court, in appeal, confirmed the acquittal of one accused, while convicted the appellant u/s. 304B IPC. Hence the present appeal.*

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Dismissing the appeal, the Court

HELD: 1. The judgment convicting the accused for the offence u/s. 304B IPC is correct. High Court has

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appreciated the evidence very deeply and the trial court had gravely erred in not accepting the evidence of PW-1, without any justifiable reason. It is a basic principle that the evidence of witness has to be appreciated as a whole, when the evidence of an ordinary witness, who is not much educated and comes from a poor strata of society, not having the advantage of education. The Court has to keep in mind all these aspects. The witness is not expected to remember every small thing, more particularly when he faces the shock of the untimely death of his near relative. The finding reached by the trial court that there was no payment of dowry, appears to be a totally incorrect finding tending to be perverse. The main reason for this appears to be contradiction in the evidence of PW-1 and PW-18, completely ignoring the fact that PW-18 was an illiterate woman and could not be expected to remember the details regarding the date on which the amount was paid to the appellant. [Paras 13 and 16] [1084-F-H; 1085-A-B; 1087-B-C]

2. In returning the finding that there was no dowry harassment to the deceased by the accused persons, the trial court had completely ignored the evidence of PW-3, which remained absolutely unshaken on that issue. In fact, even PW-5 had supported the case of the dowry harassment and so did PW-6, who is the immediate neighbour of appellant/A-1. Of course, PW-6 was declared hostile in his cross-examination. However, even he had admitted that there used to be quarrels in the house of the accused persons. The theory of love affair of the deceased was also denied by this witness in his cross-examination by the accused. PW-3 and PW-5 had specifically referred about the ill treatment of the deceased on account of non-payment of dowry and there was absolutely no cross-examination on the payment of dowry, as also the complaints made by the deceased

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A against the accused persons that she was ill treated on account of non-payment of Rs. 5,000/- The finding recorded that there was no continuous onslaught, cruelty or harassment was clearly an incorrect finding, without even bothering to realize that there was no cross-examination of the witnesses like PWs-1, 3 and 5 on that issue, though they had very specifically asserted that the deceased was being ill treated on account of non-payment of dowry. [Para 13] [1085-B-G]

C 3. The High Court has full power to review the evidence and to arrive at its own independent conclusion whether the appeal is against conviction or acquittal. The High Court was also alive to the situation that it was considering an acquittal judgment wherein, firstly, there was a general presumption in favour of innocence of the

D person accused in a criminal case, which presumption was strengthened by the acquittal, and further, that every accused is entitled to the benefit of reasonable doubt regarding his guilt and that if the High Court acquitted such accused, he would still retain that benefit in the

E appellate Court also. From the way the evidence has been appreciated by the High Court, it is clear that the High Court has disapproved of the findings given by the Trial Court and has done the whole exercise of appreciation of evidence independently. The High Court

F has given a clear finding that the Trial Court was palpably wrong in holding that the prosecution had failed to prove the guilt of the accused, more particularly, under Section 304B, IPC. Here was a case which was completely covered by the presumption u/s. 113B of Evidence Act,

G since all the aspects such as the cruelty meted out to the deceased, her unnatural death within the time span of seven years and constant demands of dowry were proved to the hilt. [Para 14] [1086-B-H]

79; *Alarakha K. Mansuri v. State of Gujarat* 2002 (3) SCC 57 A and *Beta! Singh v. State of Madhya Pradesh* 1996 (8) SCC 205, relied on.

Case Law Reference:

1996 (10) SCC 79	Relied on.	Para 14	B
2002 (3) SCC 57	Relied on.	Para 14	
1996 (8) SCC 205	Relied on.	Para 14	

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal C No. 570 of 2003.

From the Judgment & Order dated 29.10.2002 of the High Court of Karnataka at Bangalore in Criminal Appeal No. 904 of 1997.

Naresh Kaushik, Rupesh Kaushik, Lalitha Kaushik for the Appellants.

Anil Kr. Mishra, Sanjay R. Hegde for the Respondent.

The Judgment of the Court was delivered by

V.S. SIRPURKAR, J. 1. In this appeal which has been filed by one Govindaraju, original accused No. 1 before the Trial Court (appellant herein), the challenge is against his conviction for the offence under Section 304B Indian Penal Code (IPC) and the consequent punishment of rigorous imprisonment for seven years. Initially, the appellant/accused Govindaraju was tried for offence under Section 302 and/or 304B, IPC along with his father and mother, accused Nos. 2 and 3 respectively as also his brother Vasu, accused No.4. They were tried for the murder of Susheela, the wife of Govindaraju (present appellant) which took place on the night between 28/29 January, 1987 in her matrimonial home which was No. CH.27/1, 6th Cross, Ashokapuram, Mysore.

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A 2. Eventually, we are not concerned with accused Nos. 2 and 3 and also the accused No.4, Vasu, as the accused No. 2 Krishnaiah and accused No. 3, Eramma @ Marimadamma died during the pendency of the trial and accused No. 4 was acquitted both by Sessions Court and the High Court. Initially, B both the accused No.1 (for short "A-1") and his brother accused No. 4 (for short "A-4") were acquitted by the 1st Additional Sessions Judge, Mysore. However, in appeal by the State against this acquittal, the present appellant Govindaraju was convicted for the offence under Section 304B, IPC and was C sentenced to undergo rigorous imprisonment for seven years. That is how the accused is before us in this appeal.

D 3. The prosecution case was that Susheela was married to the present appellant on 25.05.1986. The original accused Nos. 2 and 3 were parents of the present appellant, while A-4, D with whom we are not concerned, was his brother. Susheela died due to burn injuries in her matrimonial home on the night of 28/29 January, 1987. She had no father. Hence, her matrimonial uncle, Ram Krishan had celebrated her marriage. After he came to know about the death of Susheela, he filed a E complaint at 9:30 a.m. on 29.01.1987 on the basis of which the further investigation was started and the charge-sheet was filed against the four accused persons. Even before that, A-2, Krishnaiah expired and hence the charges were framed against accused Nos. 1, 3 and 4 for the offence under Section 302, F 304B, 201 read with Section 34, IPC.

G 4. After the charges were framed, A-3 Eramma @ Marimadamma also expired and, therefore, the evidence was recorded only against the appellant/original accused No.1 Govindaraju and his brother A-4, Vasu. The prosecution case initially was that at the time of marriage the accused had demanded the dowry of Rs.5,000/- and even thereafter during the subsistence of marriage he kept on pestering Susheela and her uncle for dowry. At the time when Susheela expired she was pregnant. She was treated by her in-laws in a cruel manner and H

ultimately murdered, or as the case may be, she committed suicide due to the cruel treatment of her in-laws and her husband. As a result of this, she died barely within a few months of her marriage. In support of the prosecution case number of witnesses came to be examined including PW-1, her matrimonial uncle, PW-2, her brother, PW-3 another elderly relative and her mother as also some other relations including PW-4 along with other witnesses on investigation and the medical aspect.

5. Initially, the 1st Additional Sessions Judge, Mysore acquitted all the accused persons which acquittal was challenged before the High Court which set aside the judgment of the Sessions Judge insofar as the present appellant is concerned and convicted him for the offence under Section 304-B.

6. The Learned Counsel, appearing on behalf of the appellant, vehemently contended that the High Court had erred in upsetting the judgment of acquittal passed by the Trial Court. In that, the High Court had not found specifically that the findings on acquittal recorded by the Trial Court were in any manner perverse. He further pointed out that the case of the prosecution was initially to the effect that all the accused persons had committed murder of Susheela and the charge under Section 304-B IPC was also be framed against the accused persons. The charge under Section 302 having failed and not having been accepted by the Trial Court, the very basis of the prosecution case was knocked down. This aspect has not been considered by the High Court. Further, the Learned Counsel urged that the story that this accused (appellant herein) in particular and all the other accused in general, meted out cruel treatment to deceased Susheela, was a myth, as there is no evidence, whatsoever, to suggest that Susheela was, in any manner, physically tortured or ill-treated. The Learned Counsel pointed out that there was no necessity on the part of the appellant/accused to claim dowry from the family members of

- A Susheela, who he knew, were the poor lot. This was apart from the fact that he himself was earning quite well being a Cashier in a Bank. The Learned Counsel pointed out that even at the time of marriage, the husband had not insisted on any dowry. It is further pointed out that the appellant/accused loved his wife
- B and was a caring husband, particularly because she was pregnant. It was missed by the High Court that the appellant/accused had taken the deceased for a picnic at a place called Balamoori, barely a couple of days prior to the incident. It was lastly suggested that the evidence of PWs 1, 2, 3, 4, 6 and 18
- C was not trustworthy and the witnesses were given to exaggerations. According to the Learned Counsel, the Sessions Judge had taken a possible view of the matter and, therefore, the High Court should have given due weight to the judgment of acquittal.
- D 7. The Learned Counsel, appearing on behalf of the prosecution, however, supported the judgment and invited our attention to the evidence of PW-1 Ramakrishna, PW-2 Doreswamy, PW-3 Chikkaputtaiah, PW-4 Mariyamma, PW-6 Shankaranarayana, as also, PW-18 Puttasiddamma, who is
- E the mother of the deceased. The Learned prosecutor also invited our attention to the fact that the first three witnesses and more particularly, the mother had spoken specifically about the demands of dowry by the accused and there was very little or no cross-examination on the issue of dowry. Further, all the four
- F witnesses have spoken about the complaint of ill-treatment being given by the appellant/accused and his parents. According to the Counsel, the death of Susheela being unnatural death within seven years of the marriage and she having been treated cruelly, there is a presumption under
- G Section 113-B of the Evidence Act, which would nail the accused. Our attention was also invited to the evidence of Doctors.

8. We have seen the judgment of the Trial Court, as well as, the High Court closely. In his judgment, the Sessions Judge

was almost convinced that this was a case of murder. He A
pointed out that there was no explanation on the part of the accused persons as to how Susheela got burnt and who was the person who threw water on the body of Susheela, as the body was found wet when the witnesses reached the spot. The Sessions Judge also expressed, though in a halting manner, B
that though when the outsiders reached the house of the accused where the deceased died, the door was closed from inside, the said door could be locked from inside by putting hand through the window, which had the enough space and, therefore, the Sessions Judge expressed his suspicion. He also C
pointed out that the case that the deceased had committed suicide and had died at 7' O clock in the morning, was also not convincing. However, the Sessions Judge gave a benefit D
of doubt to discard the theory of murder, on the ground that the door was locked from inside and was closed and had to be broken by all the persons, who came there. The Sessions Judge had noted that there were no soot particles found either E
in the respiratory passage or inside the lungs of the deceased and, therefore, a theory could be propounded that she died first and then was burnt. However, the Sessions Judge also found that the Doctor, in his evidence, had fixed the time of death F
between 18 to 24 hours prior to the post mortem, which took place on 29.1.1987. The Sessions Judge had also discussed in details the fact that there were no struggle marks on the dead body of Susheela, which was a circumstance in favour of the accused to rule out the theory of murder. Be that as it may, the Sessions judge, however, has in the clearest possible terms, come to the conclusion that Susheela had died as she had committed suicide.

9. It was then that the Sessions Judge went on to examine G
as to whether the suicide was on account of the cruel treatment having been given to the deceased Susheela and on that backdrop, the Trial Court examined the evidence and came to the conclusion that indeed Susheela was in the advance stage H
of pregnancy and, therefore, it was unlikely that she would

- A commit suicide for no reason. This finding was criticized as an inferential finding by the defence, but in our opinion, it would not be so. For this purpose, the evidence of PWs, who were the relations would be extremely relevant.
- B 10. In his evidence, PW-1 Ramakrishna spoke about the demand of Rs.5,000/- on account of dowry at the time of marriage, which he could not arrange and, therefore, had promised the appellant/accused that he would pay later on and that he actually paid Rs.2,000/- before the death of Susheela.
- C It was pointed out by the defence that there was some contradiction in the evidence of PW-1 and PW-18 on this issue on payment of Rs.2,000/-. However, in our opinion, that contradiction is minor, considering the fact that PW-18 is an illiterate person. When we see the evidence of PW-1, who was extensively cross-examined, we find that his claim about the
- D demand of dowry remains unshaken in his cross-examination. Here was a poor man, who had to take loans for arranging the marriage of his sister's daughter though he himself hardly had any income. He specifically claimed that he took loans from the Society and was paying the installments on account of that. He
- E also specifically stated that Susheela complained to him on 2-3 occasions when she had come to his place, where her mother also stayed, that she was in trouble on account of the non-payment of Rs.5,000/-, which this witness had agreed to pay at the time of marriage. He claimed that the accused persons
- F were harassing Susheela for not bringing the balance amount of dowry and that every time, he had to pacify. He also asserted that the accused were not sending Susheela to his house at the time of festivals and that they had sent Susheela to his house only twice after the marriage. At this juncture, it must be
- G observed that there was hardly any distance between the house of this witness and Susheela's matrimonial house. Susheela's house was in the other street, which was near the house of the witness. It is strange that a newly married girl like Susheela could be sent to her parental house, which is so near only on 2-3 occasions. That is also the claim of the other witnesses like
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PWs 2, 3 and 18. PW-1 also pointed out that a day prior to A
death, Susheela was not taking any food and, therefore, he and
his elder brother's son Doreswamy (PW-2) went to the house
of accused situated in the 6th Cross, Ashokapuram, Mysore
in the evening and at that time, the appellant/accused was not
present in his house and Susheela cried on his being asked
as to why she is not having any food and had expressed that
she was afraid to continue to live in her husband's house, as
the husband and his relatives were harassing and that she could
be taken to her parental house. B

11. The witness further asserted that when at his instance, C
Susheela had started taking her food, the appellant/accused
came there and got angry as to how she was having food and
he was not called. At that time also, when the witness wanted
to take Susheela along with him, the appellant/accused
expressed that she should remove her Thali (an ornament worn
by a married lady) and then alone she could leave the house. If D
this was the treatment received by Susheela and that too
before her maternal uncle, it could be imagined what could be
the state of affairs otherwise. Thereafter, the witness saw only
the dead body of the girl. All these assertions could not be E
shaken in the cross-examination in any manner. Beyond giving
the suggestions that there were no demands from bridegroom's
side for dowry, there was hardly anything in his cross- F
examination. True it is that he admitted that he had not stated
about the demand of the accused about Rs.5,000/- during the
marriage talks. However, he explained that the talk of dowry did G
not take place at the time of marriage talks and it was only later
that the demand was made. Some stray suggestions were given
like Susheela used to come to his house often or that he himself
was pestering Susheela for money on account of the
expenditure that he had incurred for her marriage, which the
witness had refuted. The most important part is a wild
suggestion given to the witness that Susheela used to move H
about and that she had an affair with one Shridhara, who was
the son of PW-3 Chikkaputtaiah and that the appellant/accused

A had asked the wife not to go to the house of PW-3 Chikkaputtaiah. A suggestion was thrown that Susheela wanted to marry Shridhara. Naturally, the suggestion was refuted.

12. This was almost an imaginary case invented by the defence that Susheela had a love affair with Shridhara and out of frustration, she committed suicide. There is absolutely no basis for this theory. We have examined evidence of PW-3 Chikkaputtaiah very closely on this aspect. Even he refuted all the suggestions in this behalf. It must be remembered here that the distance between the house of the accused and the Susheela's maternal uncle's house could be covered within five to ten minutes. Even the house of PW-3 Chikkaputtaiah was near the house of PW-1. Under such circumstances, if Susheela had an affair and used to move about with Shridhara prior to her marriage, it was impossible that the appellant/accused would not know about such a liaison. That theory seems to have been invented only to add colour to Susheela's suicide and was rightly rejected by the Appellate Court. The fact that Susheela did not take food for two days prior to her death, itself goes on to prove the mental torture that she suffered and as if it was not sufficient, she was chided by the appellant/accused a day prior to her death on the trifling issue that she had taken the food earlier to him and he was not called for and that she could go to her house only after removing her Thali (ornament worn by a married lady).

13. There can be no doubt that in the evening, the appellant/accused was not present. The High Court has appreciated the evidence very deeply and in our opinion, the Sessions Judge had gravely erred in not accepting the evidence of this witness without any justifiable reason. It is a basic principle that the evidence of witness has to be appreciated as a whole, when the evidence of an ordinary witness, who is not much educated and comes from a poor strata of society not having the advantage of education. The Court has to keep in mind all these aspects. The witness is not expected to

remember every small thing, more particularly when he faces the shock of the untimely death of his near relative. The finding reached by the Sessions Judge in his judgment that there was no payment of dowry appears to be a totally incorrect finding tending to be perverse. The main reason for this appears to be contradiction in the evidence of PW-1 and PW-18, completely ignoring the fact that PW-18 was an illiterate woman and could not be expected to remember the details regarding the date on which the amount of Rs.2,000/- was paid to the appellant. In returning the finding that there was no dowry harassment to Susheela by the accused persons, the Sessions Judge had completely ignored the evidence of PW-3, which remained absolutely unshaken on that issue. In fact, even PW-5 B. Puttaiah had supported the case of the dowry harassment and so did PW-6 Shankaranarayana, who is the immediate neighbour of appellant/A-1. Of course, PW-6 Shankaranarayana was declared hostile in his cross-examination. However, even he had admitted that there used to be quarrels in the house of the accused persons. The fantastic theory of Susheela's love affair with Shridhara was also denied by this witness in his cross-examination by the accused. PW-3 and PW-5 had specifically referred about the ill treatment of dowry and there was absolutely no cross-examination on the payment of dowry, as also the complaints made by Susheela against the accused persons that she was ill treated on account of non-payment of Rs.5,000/- The finding recorded that there was no continuous onslaught, cruelty or harassment was clearly an incorrect finding, without even bothering to realize that there was no cross-examination of the witnesses like PWs-1, 3 and 5 on that issue, though they had very specifically asserted that Susheela was being ill treated on account of dowry.

14. The learned counsel seriously criticized the judgment of the High Court contending that the High Court had not given due weightage to the findings of acquittal as recorded by the Trail Court. When we see the judgment of the High Court, it is

- A clear that the High court has not only considered the whole prosecution evidence closely but has also considered the defence evidence. The criticism is not correct. The High Court has relied on the judgment of this Court reported as *Dhanna Etc. v. State of Madhya Pradesh* [1996 (10) SCC 79] to show
- B that the High Court has full power to review the evidence and to arrive at its own independent conclusion whether the appeal is against conviction or acquittal. The High Court was also alive to the situation that it was considering an acquittal judgment wherein, firstly, there was a general presumption in favour of
- C innocence of the person accused in a criminal case, which presumption was strengthened by the acquittal, and further, that every accused is entitled to the benefit of reasonable doubt regarding his guilt and that if the High Court acquitted such accused, he would still retain that benefit in the appellate Court
- D also. The High Court has also relied on the ruling reported as *Allarakha K. Mansuri v. State Of Gujarat* [2002 (3) SCC 57] to the effect that the paramount consideration of the Court would be to avoid miscarriage of justice arising from acquittal of guilty. One other judgment rightly relied on by the High Court is *Betal Singh v. State of Madhya Pradesh* reported in 1996 (8) SCC 205 to the effect that the appellate Court can come to its own conclusion about the credibility of the witnesses, if such credibility depends on factors other than the demeanor of witnesses. From the way the evidence has been appreciated by the High Court, it is clear that the High Court has
- E F disapproved of the findings given by the Trial Court and has done the whole exercise of appreciation of evidence independently. The High Court has given a clear finding in para 28 of its judgment that the Trial Court was palpably wrong in holding that the prosecution had failed to prove the guilt of the
- G accused, more particularly, under Section 304B, IPC. Here was a case which was completely covered by the presumption under Section 113B of the Indian Evidence Act since all the aspects such as the cruelty meted out to Susheela, her unnatural death within the time span of seven years and
- H constant demands of dowry were proved to the hilt.

15. We have no doubt that there were many things than what meets the eye in the death of Susheela who died in her own bedroom of burn injuries. We would have expected some explanation on that count. It was clear that she died in the wee hours and yet there was nothing, even suggestive, of any explanation. The High Court has severally commented on all these aspects and we do not find anything wrong with the High Court's judgment. A

16. In that view, we hold that the judgment convicting the accused of the offence under Section 304B, IPC is correct and the appeal has no merits. It is accordingly dismissed. B

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Appeal dismissed.