

SHINDO ALIAS SAWINDER KAUR AND ANR.

v.

STATE OF PUNJAB

(Criminal Appeal No. 1902 of 2010)

MARCH 31, 2011

[HARJIT SINGH BEDI AND CHANDRAMAULI KR.  
PRASAD, JJ.]

*Penal Code, 1860: ss.304B, 498A – Dowry death – Allegation that sister-in-law and mother-in-law of the victim-deceased poured kerosene on her and lit fire as she could not satisfy their demand for dowry – Dying declarations recorded by the police officer and the Magistrate – Trial court did not find dying declarations reliable for the reason that the deceased had suffered 100% burn injuries and would not have been in a position to give dying declarations – Order of acquittal – High Court endorsed the view of trial court that both the dying declarations were not reliable, however, relying on the evidence of father of the deceased held that the demand for dowry soon before the death had been made and as the death was unnatural, the ingredients of s.304B were spelt against the accused – Conviction – On appeal, held: In statement made u/s.161, Cr.P.C., the father of the deceased admitted that allegation of dowry demand was not made by him – Improvement made in his evidence in court clearly spelt out a case of doubt with regard to the veracity of his evidence – There was no reference whatsoever to the accused-appellants either to demand of dowry or their involvement in any manner – The doctor who gave fitness certificate to the deceased for making statement was not cited as a prosecution witness – The evidence of the doctor (who gave post mortem report) was general in nature with regard to the capacity of 100% burnt victim to make a statement – No doubt, death was unnatural and had taken place within*

A *seven years of the marriage but the third ingredient of dowry demand soon before the death was not proved – In this view of the matter, the presumption u/s.113B of the Evidence Act could not be raised – Conviction set aside – Evidence Act, 1872 – s.113B.*

B CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1902 of 2010.

From the Judgment & Order dated 17.2.2010 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal C No. 394-DBA of 2011.

N. Rai, Tara Chandra Shrama and Neelam Sharma for the Appellants.

D Kuldeep Singh for the Respondent.

The following Order of the Court was delivered

## O R D E R

E This appeal arises out of the following facts:

On the 19th March, 1999 ASI Gurmit Singh posted at police station, Mehta received information from the Guru Nanak Dev Hospital, Amritsar to the effect that one Balbir Kaur was lying admitted in the hospital with severe burn injuries. The F police officer rushed to the hospital at about 8.15 p.m. and found her lying admitted in the 5th Surgical Ward. An application was thereafter moved by the police officer seeking the opinion of the doctor regarding her fitness to make a statement as her condition was critical. The ASI then went on G to record the statement (Ext.PC). In her statement Balbir Kaur stated that she had been married with Jarnail Singh about three years prior to the date of the incident and two children had been born from the marriage and that during the course of the deliberations before the marriage and even thereafter several H articles of dowry had been given to satisfy the demands of the

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two accused Shindo-her mother-in-law and Paramjit Kaur-her married sister-in-law. She further stated that on account of the harassment meted out to her by the two accused an additional sum of rupees one lakh had been obtained by her from her father and handed over to them. She further went on to say that at about 2.20 p.m. on that date the two accused who were present along with her in the house had asked her to bring more money from her parents but she had replied that as her father had already given sufficient dowry as per his status nothing more would be brought by her and this had apparently annoyed the accused and whereas Shindo had poured kerosene oil on her, Paramjit Kaur had set her alight causing severe burn injuries. She further stated that on receiving information about the happening, her husband Jarnail Singh had rushed back from his shop and after arranging a vehicle had taken her to Amritsar and had got her admitted to the hospital. On the very next day i.e. on the 20th March, 1999 Ajit Singh (PW.2) Balbir Kaur's father, moved an application (Ext. P.H.) requesting the Chief Judicial Magistrate, Amritsar to record the statement of his daughter as the police was not doing the necessary investigations. The CJM directed the duty Magistrate to do the needful whereupon the Judicial Magistrate, 1st Class, recorded another statement of Balbir Kaur in the hospital after obtaining a certificate of fitness from Dr. Rahul Gupta, the attending doctor. In this statement she gave almost the same details as in the statement made to the ASI. Balbir Kaur died on the 23rd march 1999 and a case under Sections 304-B and 498-A was registered. On the completion of the investigation a charge under Section 302/34 and in the alternative 304-B/34 read with Section 498-A of the IPC was framed against the two accused. The Trial Court in the Course of an elaborate judgment observed that the two dying declarations, one made by the ASI, and another to the Judicial Magistrate could not be relied upon, primarily for the reason that Balbir Kaur was in a very serious condition with 100% burn injuries and would not have been able to give a dying declaration to the ASI. The second dying declaration was rejected as well on the additional ground that

- A Dr. Rahul Gupta who had given the endorsement of her fitness had not even been cited as a prosecution witness during the trial. The trial Judge also rejected the evidence with regard to the demand of dowry of PW.2 Ajit Singh, as it was brought out during the course of the cross examination that in his statement under Sec.161 Cr.P.C. he had not referred to any such demands having been made by the accused. The Trial Court accordingly acquitted both the accused.

- C An appeal was thereafter taken by the State to the Punjab and Haryana High Court. The High Court has endorsed the opinion of the Trial Court that both the dying declarations deserved to be rejected. However, the High Court relying on the evidence of PW.2, held that demands for dowry soon before the death had indeed been made and that some parts of two dying declarations supported the allegations of such demands and as the death was undoubtedly unnatural the ingredients of Section 304-B were spelt out against the accused. The judgment of the Trial Court was accordingly reversed and the accused were convicted under Section 304-B of the IPC and 498-A of the IPC and sentenced to imprisonment for seven years and under 498-A to two years with a fine of Rs.5000/- in default, to further undergo rigorous imprisonment for a period of six months, both the sentences to run concurrently. T h i s appeal has been filed challenging the order of the High Court.

- F During the course of the hearing today Mr. Nagender Rai, the learned senior counsel for the appellant, has argued that in the light of the fact that the dying declarations had been rejected by both the Courts the only other evidence if at all was the statement of PW.2 Ajit Singh and as his evidence pertaining to the demands of dowry was uncertain his statement could not be relied upon. He has also taken us to the evidence of PW.2 Ajit Singh and we have gone through the same very carefully. In his examination in chief he did refer to the fact that demands for dowry had been made and that Balbir Kaur, his daughter, had been harassed on that account. However, he was

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confronted with his statement under Section 161 of the Cr.P.C. and has forced to admit that no such demand had been referred to in the said statement. We find that the improvements made by PW.2 Ajit Singh in his evidence in Court clearly spells out a case of doubt with regard to the veracity of his evidence. It is also extremely significant that in the applications Exh. PH(2) and PH(3) dated 20th March, 1999 which he had had made before the CJM requesting that the the dying declaration of his daughter be recorded, he had referred to the fact that the demands for dowry had been made by her husband Jarnail Singh and he was the one to have set her alight. We find that there is no reference whatsoever to the appellants before us either to the demands of dowry or their involvement in any manner.

Mr. Kuldip Singh, the learned State counsel has however argued that the dying declarations particularly the one recorded by the Magistrate required to be accepted. He has pointed out that though Dr. Rahul Gupta had not been cited as a witness but from the evidence of the Dr. Jagdish Singh Gill (Pw.1) who had conducted the post-mortem examination, it was clear that a person with 100% burn injuries could also make a lucid statement and as such it was apparent that Balbir Kaur had been in a fit condition to make a statement. We see from the evidence of PW.1 that his evidence was general in nature with regard to the capacity of a person suffering from 100% burn injuries to make a statement. In the case before us, however, Dr. Rahul Gupta had given a positive opinion that she was in a fit condition to make a statement but he was not even cited as a prosecution witness. Both the Courts have therefore found that the two dying declarations were not trustworthy or capable of reliance.

We also notice that the High Court was dealing with an appeal against acquittal. Undoubtedly in a case of a dowry death under Section 304-B, a presumption of Sec.113-B does arise against the accused. However, the presumption is

- A relateable to the fact that the prosecution must first spell out the ingredients of the offence and then only can a presumption arise. In the present case we find that the death was an unnatural one and had taken place within seven years of the marriage but the third ingredient that any demand for dowry had been
- B made soon before the death has not been proved. In this view of the matter the presumption under Section. 113-B of the evidence cannot be raised. We accordingly allow this appeal; set aside the judgment/order of the High Court.

- C The appellants are in custody; they shall be released forthwith if not required in any other case.

D.G.

Appeal allowed.