Lakhjit Singh vs State Of Punjab on 31 March, 1993

Equivalent citations: 1994 SCC, SUPL. (1) 173

Author: G.N. Ray

Bench: G.N. Ray

```
           PETITIONER:
LAKHJIT SINGH

        Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT31/03/1993

BENCH:
REDDY, K. JAYACHANDRA (J)
BENCH:
REDDY, K. JAYACHANDRA (J)
RAY, G.N. (J)

CITATION:
 1994 SCC  Supl.  (1) 173


ACT:



HEADNOTE:



JUDGMENT:
```

ORDER

1. Heard learned counsel for the parties.

2. This appeal pursuant to the special leave granted, is directed against the judgment of Punjab and Haryana High Court. There are two appellants, viz., Lakhjit Singh (original accused 1) and Sukhpal Kaur (original accused 2). These two appellants, along with one Vir Singh (original accused 3) were tried for offence punishable under Section 302 Indian Penal Code and convicted by the trial court and sentenced to undergo imprisonment for life and also to pay a fine of Rs 2000 and in default to undergo further rigorous imprisonment for six months. All of them preferred an appeal, but the

High Court acquitted Vir Singh (A-3) and confirmed the convictions of the two appellants.

3. Appellant 1 is the son of appellant 2 and Vir Singh (A-

3). They are the residents of Village Abul Khurana in Faridkot district. The deceased Kailo was the wife of Lakhjit Singh (A-1). On February 16, 1981, the marriage between Lakhjit Singh and the deceased took place. According to the prosecution, the three accused were demanding dowry and they used to ill-treat the deceased. About 18/19 days prior to the occurrence, the deceased went to her parent's house. On July 19, 1981, the husband went to his in-law's house to bring his wife back to his own house and on July 22, 1981, he returned to his village along with the deceased. On July 25, 198 1, the deceased complained of pain and Lakhjit Singh, the husband called a doctor (DW 3) for treatment who gave her an injection. Thereafter they took the deceased to Malout Mandi to Dr Goyal (PW 1) for her treatment. He examined her and told that the deceased suffered a heart attack and had expired. They brought back the dead body to their house. Then the husband himself made a complaint to the Sub-Inspector who happened to be present there in the village. An inquest was held and the dead body was sent for post mortem. Doctor (PW 2) who conducted the postmortem sent the viscera to the chemical examiner. The report revealed that organo-phosphorus compound was found in the stomach, small intestines, large intestines, liver, spleen, kidney and brain of the deceased. On receipt of the report, a formal FIR was recorded and a case registered under Section 306 Indian Penal Code. When the case came up for trial, a charge was framed under Section 302 Indian Penal Code and they proceeded with the trial. Regarding the motive, viz., the cruelty part of it, PWs 4 and 5 were examined. The other main witnesses are the doctors. The accused pleaded not guilty. The trial court taking the circumstances into consideration and relying on the postmortem evidence as well as the chemical examiner's report, held that it was a case of poisoning and the circumstances were enough to convict all the three accused and accordingly convicted them. All of them preferred an appeal to the High Court and the High Court while acquitting A-3 the father-in-law of the deceased, confirmed the convictions of the two appellants - the husband and the mother-in-law of the deceased. Hence, this appeal is by the two convicted-accused.

4. The learned counsel for the appellants submits that both the courts mainly on suspicion and conjecture have reached the conclusion that the two appellants were responsible for administering poison to the deceased and that it could be a case of accidental death or at the most, suicide, and, at any rate, there is no evidence whatsoever that the two accused were harassing her and, therefore, question of cruelty against her does not arise in this case and, as a result of which, none of them can be found guilty.

5. Theory of accident is based on the ground that the deceased was also working in the field in which insecticide was sprayed and she could have inhaled and that could have caused her death. We see no force in this submission because the chemical examination report shows that poisoning was present in almost all the organs. Therefore, it is clearly a case where the poison must have been consumed or somebody must have administered the same. The next question is whether there is any evidence to connect these appellants with the administration of poison. The trial court as well as the High Court held that the conduct of the accused, viz., in giving the first information report to the effect that she was subjected to heart attack and the suppression of the fact of unnatural death would result in

drawing an adverse inference and these and other circumstances, would be enough to reach a conclusion that these accused must have administered the poison. The High Court also took into consideration the background viz., there was a demand for dowry and within 5 months after the marriage this death took place, and, therefore, a strong case arises against the accused, particularly, when they suppressed or tried to destroy the evidence and create false evidence.

6. In a case of circumstantial evidence, each circumstance must be proved beyond reasonable doubt by independent evidence and the circumstances so proved, must form a complete chain without giving room to any other hypotheses and should be consistent with only the guilt of the accused. In the instant case, there is some evidence which we will consider later about the demand of dowry and about ill- treatment, which could be a strong reason for committing suicide also. Unless some other material connect the accused with administration of poison. on mere suspicion or conjecture they cannot be found guilty. Both the courts below by suspicion and by drawing adverse inferences, however, held that the accused must have administered the poison. This is again only on the basis of a strong suspicion. So far as the earliest information given by the first appellant is concerned, it is not as if there is no basis whatsoever, to suspect to that it was a case of heart attack. As a matter of fact, PW 2 who performed the autopsy, gave an opinion that the death was due to presence of organo-phosphorus compound and heart attack. Therefore, it cannot be concluded that in the initial stages they suppressed the truth and wanted to create false evidence. For these reasons we find it difficult to hold that the appellants were responsible for administration of poison and thus guilty of offence punishable under Section 302 Indian Penal Code.

7. The next question is whether an offence under Section 304-B or 306 is made out. It is true that the accused was tried only under Section 302 Indian Penal Code and it is submitted that question of drawing a presumption attracted under Section 113-A or 113-B does not arise. Section 113-B deals with the presumption of dowry death. In the instant case, taking the medical evidence as such, it can only be held that at the most the prosecution has proved that the death could be suicide and Section 304-B or the presumption under Section 113-B Evidence Act cannot be invoked because Section 304-B came into effect only on November 19, 1986 i.e. much later than when this offence took place.

Therefore, we are left with the other offenses punishable under Section 306 Indian Penal Code.

8. Section 113-A of the Evidence Act provides for the prosecution of suicide and lays down that where there is a suicide committed by woman and when the question arises whether the husband or any other relative had abetted the same and if this suicide is within seven years from the date of marriage and if she had been subjected to cruelty then it will be assumed that they abetted the suicide. In this case, in their evidence, PW 4 and PW 5 have deposed that there had been a demand of dowry by the mother-in-law, husband as well as by the father-in-law. The mother of the deceased PW 3, however, in her deposition, has stated that the deceased complained to her that the mother-in-law was demanding dowry and harassing her for the same and that the other two were silent about it. Therefore, the inference is that connivance of the other two also was there when the deceased was being treated accordingly. Therefore, the cruelty part of it meted out to the deceased is proved.

9. The learned counsel, however, submits that since the charge was for the offence punishable under Section 302 Indian Penal Code, the accused were not put to notice to meet a charge also made against them under Section 306 IPC and, therefore, they are prejudiced by not framing a charge under Section 306 Indian Penal Code and; therefore, presumption under Section 113-A of Indian Evidence Act cannot be drawn and consequently a conviction under Section 306 cannot be awarded. We are unable to agree. The facts and circumstances of the case have been put forward against the accused under Section 313 CrPC and when there was a demand for dowry it cannot be said that the accused are prejudiced because the cross-examination of the witnesses, as well as the answers given under Section 313 of the CrPC would show that they had enough of notice of the allegations which attract Section 306 Indian Penal Code also. That apart, what all Section II 3-A of Evidence Act says is that the court, having regard to the other circumstances of the case can presume. Therefore, the circumstances in this case would show that the accused have been demanding dowry even within a short period after the marriage and the deceased also had to live in her parent's house and it is the husband who went and brought her back. The deceased followed him and unfortunately, the incident has taken place. Since there is no direct evidence regarding administration of poison to the deceased as such, the only course left is to hold that the prosecution has proved only suicide. In these circumstances, Section 306 is attracted. For these reasons,the conviction of the appellants under Section 302 and sentence of imprisonment for life are set aside. Instead, they are convicted under Section 306 Indian Penal Code and each of them is sentenced to undergo rigorous imprisonment for 5 years and sentence of fine of Rupees 2000 with default clause are confirmed. Subject to this modification the appeal is disposed of. If the appellants have already served out the sentence of 5 years, they need not be sent to jail again.