

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1629 OF 2021
(Arising out of SLP (CrI.) No. 1406 of 2019)

AJAY KUMAR

Appellant(s)

VERSUS

THE STATE OF PUNJAB

Respondent(s)

O R D E R

Leave granted.

The appellant was prosecuted for having committed the offence under Section 304-B of the Indian Penal Code (IPC) along with his mother, brother and sister-in-law. The trial Court convicted the appellant as also his relatives. An appeal was carried against the conviction before the High Court. The High Court by the impugned judgment has allowed the appeal *qua* others but sustained the conviction as far as the appellant is concerned. Hence the appeal.

Marriage between the appellant and his wife took place on 16.02.1999. There is no dispute that the wife of the appellant committed suicide on 11.12.2001. Thereafter, on 19.12.2001, an FIR came to be lodged. Thereunder, allegation was made about raising of demand for more dowry and also about there being illicit relationship between the

appellant and his brother's wife.

Fifteen witnesses were examined on behalf of the prosecution. There were three defence witnesses as well. PW 5, 6, 7, 8 are the witnesses who appear to have given evidence on behalf of the prosecution to prove the case under Section 304-B IPC.

We have heard learned senior counsel appearing for the appellant and also the learned counsel appearing on behalf of the State.

Learned senior counsel for the appellant would complain that this is a case where the Court may appreciate that while it may be true that death took place within the period of three years, certain events are to be taken note of. It so happened that the appellant went for a marriage along with his friends. His deceased wife was not taken along with them because there was a 10 month old child and it was during winter. It is stated that the wife was apparently unhappy with her not being taken. It is, thereafter, that the unfortunate incident took place. What is more significant is that the parents of the deceased did not have any complaint, whatsoever, at that point of time. They gave a statement indicating that there was no complaint as such. It is, thereafter, with considerable delay, the statement which led to the FIR came to be made.

He would further, of course, point out that the High Court has not dealt with the case of the appellant as is self-evident from the perusal of the judgment. He would submit that this is not a case where the prosecution has succeeded in establishing a case under section 304-B IPC.

Per contra, learned counsel for the State would highlight the discussion made by the trial Court which considers and discusses the evidence of the witnesses who have statements about the demand for dowry and the cruelty associated with it.

A perusal of the impugned judgment would show that the High Court had, on the one hand, dealt with the criminal appeal filed on behalf of the relatives of the appellant and proceeded to find that they were wrongly convicted. When it comes to the appellant, we notice that there is no discussion as such of the case of the appellant. What is *inter alia* indicated is that a young married woman blessed with a son would not have ended her life without any rhyme and reason; some sort of matrimonial discord was there. We must pause here and indicate that in a prosecution for the commission of an offence and that too, a serious offence like section 304B IPC to hold that some sort of matrimonial discord was there clearly does not, in any manner, advance the case of the prosecution. Such reasoning clearly falls short of the premise on which a person can be convicted

under section 304B IPC. Ingredients of Section 304B IPC need not be reiterated as it has been expounded in a catena of judgments of this Court. The Court goes on to refer to Sections 113A and 113B of the Evidence Act and, thereafter, the Court proceeds to find that from the facts, the trial Court is justified in convicting the appellant.

This Court has declared the importance of the right to appeal with a person who stands convicted. Article 136 is only a special extraordinary jurisdiction which is not a right of appeal in itself. It is to be exercised rarely. The real right which is available to the person who is convicted is the right of appeal. The appellant Court is duty bound to reappraise the evidence and apply the law to the facts as are found on such reappraisal. This necessarily means that the High Court must discuss the evidence threadbare and also apply the correct principles of law. We do not think that in this case, the impugned judgment of the High Court has dealt with the matter as is required in law. In fact, the learned senior counsel for the appellant has pointed out that the High Court has found that the delay with which the FIR was lodged was unexplained and the relatives who had given the statements were not produced before the Court. There is also a case of the appellant that PW 6, 7, 8, 9 have been disbelieved by the High Court *qua* other accused and it is his case that it is a

common case as against all the accused which the prosecution had. Therefore, the High Court ought to have acquitted the appellant runs the appellant's argument.

Having heard learned counsel for the parties , we are of the view that this is a case which requires us to remand the matter to the High Court for considering the case of the appellant. Accordingly, the appeal is allowed. The impugned judgment of the High Court is set aside *qua* the appellant. In other words, we make it clear that we are not disturbing the acquittal of the other accused by the High Court. The High Court will proceed to hear the matter *qua* the appellant alone and we request the High Court to take up and decide the matter as early as possible. The appellant will be entitled to the benefit of interim order dated 26.03.2019 under which the sentence against the appellant stands suspended and he has been released on bail which will continue till the appeal is decided.

....., J.
[K.M. JOSEPH]

....., J.
[PAMIDIGHANTAM SRI NARASIMHA]

New Delhi;
December 14, 2021.

ITEM NO.5

COURT NO.10

SECTION II-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No. 1406/2019
(Arising out of impugned final judgment and order dated 23-08-2018
in CRAS No. 1722/2004 passed by the High Court of Punjab & Haryana
at Chandigarh)

AJAY KUMAR

Petitioner(s)

VERSUS

THE STATE OF PUNJAB

Respondent(s)

(With IA No. 179401/2018 - EXEMPTION FROM FILING O.T. and IA No.
52659/2019 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

Date : 14-12-2021 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE K.M. JOSEPH
HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA

For Petitioner(s) Mr. Brijender Chahar, Sr. Adv.
Mr. Mrinmay Bhattmewara, Adv.
Mr. Ankit Verma, Adv.
Mr. Santosh Kumar, Adv.
Mr. Vivek Gupta, AOR

For Respondent(s) Ms. Jaspreet Gogia, AOR
Ms. Mandakini Singh, Adv.
Mr. Karanvir Gogia, Adv.
Ms. Shivangi Singhal, Adv.
Ms. Varnika Gupta, Adv.
Ms. Ashima Mandla, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

(NIDHI AHUJA)
AR-cum-PS

(RENU KAPOOR)
BRANCH OFFICER

[Signed order is placed on the file.]