

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 1336/2014

SURAJ BHAN

APPELLANT(S)

VERSUS

STATE OF HARYANA

RESPONDENT(S)

O R D E R

1. The appellant is the first accused who has been convicted for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (for short, "IPC") for committing murder of his wife.

2. Few facts must be set out here. The marriage between the appellant and the deceased was solemnized in November, 1999. The incident happened on the intervening night of 7<sup>th</sup>/8<sup>th</sup> July, 2003. The appellant admitted the deceased in the Civil Hospital at Sonapat with 90 % burn injuries. Dr. V.K. Gupta (PW-7), who examined the deceased, found that the deceased was unfit to make a statement. Thereafter, the deceased was shifted to Lok Nayak Hospital in Delhi.

3. On 8<sup>th</sup> July, 2003, the statement of the deceased was recorded by the Sub-Divisional Magistrate (for short, "the SDM") in which she stated that the appellant (husband) caught her and poured kerosene on her person. Thereafter, the accused nos.2 and 3 set her ablaze with a match stick. She stated that she was treated in this fashion as she could not comply with the demand of dowry of Rs.40,000/- (Rupees Forty Thousand) or more. On the basis of the

said dying declaration of the deceased, a First Information Report was registered. The Trial Court convicted all the three accused for the offences punishable under Section 302 read with Section 34 of the IPC. The High Court, in Appeal, by the impugned judgment, acquitted the accused nos.2 and 3 and confirmed the conviction of the appellant.

4. The prosecution evidence revolves around the alleged dying declaration of the deceased made before the SDM and another dying declaration made before her sister (PW-3). The prosecution also relied upon the endorsement made by a doctor on the bed head ticket of the deceased. Lastly, the prosecution relied upon the evidence of the father of the victim (PW-2).

5. After having perused the impugned judgment, we find that for cogent reasons, the High Court discarded the case of the prosecution regarding dying declaration recorded before the SDM. The High Court also rejected the testimony of PW-3 (sister of the deceased) on the alleged dying declaration made by the deceased before her. The High Court found that PW-2 (father of the victim) did not support the prosecution on the issue of demand of dowry. He deposed that PW-3 informed him that the deceased disclosed to PW-3 that she was burnt by the accused. This part of the evidence of PW-2 is obviously a hearsay evidence. The fourth piece of evidence was an endorsement made by the doctor on the bed head ticket of the deceased. The finding of the High Court is that Dr. Arun Goel (PW-17), who produced the said document, did not name the doctor who made the endorsement and he could not identify the

signature of the doctor on the endorsement. Moreover, the High Court held that the doctor who made the endorsement was not examined to prove the said endorsement.

6. The learned counsel appearing for the appellant submitted that on the same set of evidence, accused no.2 and 3 have been acquitted. The order of their acquittal has not been assailed by the State and, therefore, the appellant deserves to be acquitted.

7. The learned counsel appearing for the State submitted that the High Court has relied upon Section 106 of the Indian Evidence Act, 1872 (for short, "the Evidence Act") and has held that the appellant failed to explain in what circumstances the deceased suffered burn injuries, especially when both of them were residing in the same house. He submitted that on the failure of the appellant to discharge the burden under Section 106 of the Evidence Act, the High Court was justified in convicting the appellant.

8. As can be seen earlier, the four pieces of evidence relied upon by the prosecution to prove the involvement of the accused persons have been discarded by the High Court. Therefore, it is a case of no evidence against the appellant and other accused. In such a situation, the High Court could not have relied upon the rebuttable presumption under Section 106 of the Evidence Act as the sole basis of conviction as the prosecution has not discharged the initial burden. Apart from Section 106 of the Evidence Act, the Trial Court came to the conclusion that there was a motive for committing the offence as the relationship between the appellant and the deceased was strained. Firstly, there is no evidence on

record to show that they had a strained relationship. Secondly, only on the ground of strained relationship, one cannot jump to a conclusion that the appellant is the author of the burn injuries sustained by the deceased. Therefore, the only conclusion which can be drawn is that the appellant is entitled to be acquitted. We may note here that the appellant has already undergone incarceration for a period of more than 13 years.

9. Accordingly, the impugned judgment dated 5<sup>th</sup> April, 2010 of the High Court is set aside only insofar as the appellant (Suraj Bhan) is concerned. The appellant (Suraj Bhan) is acquitted of the offences alleged against him. As the appellant (Suraj Bhan) is on bail, his bail bonds stand cancelled.

10. The Appeal is, accordingly, allowed.

.....J.  
(ABHAY S.OKA)

.....J.  
(UJJAL BHUYAN)

NEW DELHI;  
FEBRUARY 21, 2024.

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G SCRIMINAL APPEAL NO(S). 1336/2014

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APPELLANT(S)

VERSUS

STATE OF HARYANA

RESPONDENT(S)

Date : 21-02-2024 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ABHAY S. OKA  
HON'BLE MR. JUSTICE UJJAL BHUYANFor Appellant(s) Mr. Ashwani Bhardwaj, AOR  
Ms. Vinay Bhardwaj, Adv.  
Ms. Sangita Malhotra, Adv.For Respondent(s) Mr. Shekhar Raj Sharma, D.A.G.  
Ms. Akshaya Jebakumar, Adv.  
Dr. Monika Gusain, AORUPON hearing the counsel the Court made the following  
O R D E R

The Appeal is allowed in terms of the signed order. The operative portion of the order reads thus:

"9. Accordingly, the impugned judgment dated 5<sup>th</sup> April, 2010 of the High Court is set aside only insofar as the appellant (Suraj Bhan) is concerned. The appellant (Suraj Bhan) is acquitted of the offences alleged against him. As the appellant (Suraj Bhan) is on bail, his bail bonds stand cancelled.

10. The Appeal is, accordingly, allowed."

Pending application(s), if any, shall stand disposed of accordingly.

(ASHISH KONDLE)  
COURT MASTER (SH)(AVGV RAMU)  
COURT MASTER (NSH)

[THE SIGNED ORDER IS PLACED ON THE FILE]