



Crl.A. No. D-810-DBA-2004

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

Crl.A. No. D-810-DBA-2004

Reserved on 08.08.2024

Pronounced on: September 02, 2024

State of Punjab

.....Appellant

vs.

Prem Singh and ors

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. Maninderjit Singh Bedi, Addl.A.G. Punjab
for the appellant.

Mr. Satinder Khanna, Advocate for respondent No.1

Mr. Prateek Pandit, Advocate (Legal Aid counsel)
for respondent Nos. 2 to 4.

SUDEEPTI SHARMA J.

1. The present appeal is preferred by the State against the judgment dated 03.03.2003 passed by learned Additional Sessions Judge, Fast Track Court, Sangrur, whereby four accused in FIR No. 29, dated 05.05.2001, registered under Section 498-A/304-B of the Indian Penal Code, 1860 (for short, 'IPC') at Police Station Amargarh, were acquitted.

BRIEF FACTS OF THE CASE

2. As per the author of the FIR (Ex.PB/2)/complainant Sh. GurmailSingh, who is father of the deceased (Rajwinder Kaur), her daughter Rajwinder Kaur (since deceased) was married with Balwinder Singh on 02.12.1999. She gave birth to a son. However, Balwinder Singh gave her beatings 2-3 times and sent her to village Rurki Kalan. Rajwinder Kaur (since deceased) used to tell her father GurmailSingh that her mother-in-law Amarjit

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Kaur, father-in-law Prem Singh, husband-Balwinder Singh, brother-in-law Kulwinder Singh usually beat her by saying that she should bring scooter and they demanded more money. Then, her father Gurmail Singh along with Achhar Singh (Sarpanch of his village) went to village Chaundha and met accused Prem Singh and asked him as to why they beat Rajwinder Kaur. Prem Singh then demanded scooter and other dowry articles, upon which Gurmail Singh replied that he was not in a position to give more dowry and then, he came back to his village-Rurki Kalan after asking her daughter to understand the matter. On 05.05.2001, at about 11:00 A.M, Jora Singh told Gurmail Singh that he had received telephonic message that her daughter Rajwinder Kaur was in a serious condition, where upon, he along with his brother Jagdev Singh went to the village Chaundha to see Rajwinder Kaur. When they reached village Chaundha, Rajwinder Kaur was lying dead and froth was coming out of her mouth. So many people have collected there. The accused ran away from their house. Then, Gurmail Singh sent telephonic message to his village Rurki Kalan about the matter, upon which, sarpanch Achhra Singh & other persons of the village reached at the spot at village Chaundha. In the mean while, ASI Dev Raj also received telephonic message about the death of Rajwinder Kaur, upon which, he reached the house of the accused and recorded the statement of Gurmail Singh Ex.PB, on the basis of which, formal FIR was registered against the accused.

3. After completion of the investigation, the accused were sent up for trial. On the basis of the statement of the complainant, report under Section 173 Cr.P.C. was furnished before the Judicial Magistrate, Ist Class.

COMMITTAL PROCEEDINGS

4. Since, the offence punishable under Section 304-B of the IPC is triable exclusively by the Court of Sessions, therefore, vide order dated



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28.09.2001, the case was committed to the Court of learned Sessions for trial and the accused was directed to appear before the Court of learned Sessions Judge, Sangrur on 12.10.2001 to face trial.

TRIAL PROCEEDINGS

5. To prove its case, the prosecution examined PW1Dr. Sheetal Jain, PW2 Gurmail Singh, PW3 Jora Singh, PW4 Achhra Singh, PW5 ASI Dev Raj, PW6 Gurnam Singh, PW7 HC Gurcharan Singh, PW8 HC Bikkar Singh, PW9 Balwinder Singh. In documentary evidence, the prosecution relied upon FSL Report (Ex PF), FIR (Ex PB/2), Inquest Report (Ex PC), Post Mortem Report (Ex PA), Letter of EMO (Ex PD), Rough Site Plan (Ex PE), Letter to SHO (Ex PG), Scaled Site Plan (Ex PJ), Affidavit of MHC Bikkar Singh (Ex PK), Affidavit of Constable Balwinder Singh (Ex PL and PM). After that prosecution evidence was closed.

6. Statements of the accused under Section 313 Cr.P.C. were recorded in which they denied the allegations made against them by the prosecution and pleaded innocence. The defence examined DW1 Jarnail Singh and DW2 Harbans Singh.

7. On appearance of the accused, copies of the documents as required under Section 173 Cr.P.C. were duly furnished to the accused.

8. Their being a prima facie case under section 304-B & 498-A of the IPC against all the accused namely Prem Singh, Balwinder Singh, Kulwinder Singh and Amarjit Kaur and they were charged accordingly. However, the accused pleaded not guilty.

9. After hearing both the parties and taking into consideration the evidence on record, the learned Trial Court acquitted all the accused of the charges framed against them.



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10. Hence the present appeal.

SUBMISSIONS OF THE COUNSELS

11. Learned State counsel submits as under:-

(i) That it was a case of unnatural death at the house of the accused/in-laws of the deceased.

(ii) That the death of the deceased was within seven years of marriage, as the marriage took place on 02.12.1999 and the occurrence took place on 05.05.2001 i.e within two years of marriage.

(iii) That as per the Chemical Examiner report (Ex PF), the cause of death was due to combined effect of phosphide a constituent of aluminium phosphide found in the viscera and excessive haemorrhage due to the injury to the uterus.

(iv) That the charges were framed under Section 304-B and 498-A of the Code, but there is no finding regarding Section 498-A of the Code by the learned Trial Court.

(vi) That there was demand of dowry, seven days prior to the death of the deceased, as per the evidence of PW2 Gurmail Singh and PW4 Achhar Singh.

(vii) That as per examination in chief of PW2 Gurmail Singh (father of the deceased), he has specifically mentioned that when he reached home of the accused, he saw his daughter lying dead and body was lying on a cot and something was emitting out of her mouth. The accused persons have slipped away from the crowd, which had gathered there.

(viii) That the statements of the prosecution witnesses are credible, truthful and flawless. There is no inconsistency in their statements. There is no evidence to conclude that the occurrence did not take place and the accused have been falsely implicated.

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(ix) That it is proved on record that Rajwinder Kaur (since deceased) married with Balwinder Singh on 02.12.1999 and died unnatural death on 05.05.2001. Further there was a sworn testimony of Gurmail Singh (father of the deceased) and that of Acchra Singh (Sarpanch) that the accused maltreated Rajwinder Kaur (since deceased) for not bringing scooter and other dowry articles. The prosecution witnesses have got no motive or cause to depose falsely and therefore, it is fully established on record that Rajwinder Kaur (since deceased) died unnatural death within seven years of her marriage and the accused treated her with cruelty in connection with demand of dowry and as such ingredients of Section 304-B and 498-A of the Code are fully proved against the accused. Once these ingredients are proved, then there is presumption under Section 113-B of the Evidence Act. All these circumstances form a complete chain, which clearly proves the case of the prosecution beyond reasonable doubt.

12. Per contra, learned counsel appearing for the respondents/accused submits that during trial, PW2 Gurmail Singh deposed as per FIR that Balwinder Singh (husband of Rajwinder Kaur) and in-laws of her daughter (since deceased) were pressing and asking her to get more dowry from her father. However, during cross examination, Gurmail Singh (father of the deceased) admitted that the police had tortured him by saying “The police said that you have to level allegation of dowry demand”.

13. He further contends that apart from this, DW2 Harbans Singh(Member Panchayat Samiti) was examined as defence witness, who categorically stated that there was no demand of dowry from Rajwinder Kaur (since deceased) Similar was the evidence of Jarnail Singh, a neighbour of the accused, who was examined as DW1.



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14. He has relied upon a judgment of Hon'ble the Supreme Court of India in a case of ***State of Rajasthan through Secretary Home Department vs. Abdul Mannan and another, 2011 (8) SCC 65*** wherein Hon'ble the Supreme Court in para 9 of the judgment held as under:-

9. *As is evident from the above recorded findings, the judgment of conviction was converted to a judgment of acquittal by the High Court. Thus, the first and foremost question that we need to consider is, in what circumstances this Court should interfere with the judgment of acquittal. Against an order of acquittal, an appeal by the State is maintainable to this Court only with the leave of the Court. On the contrary, if the judgment of acquittal passed by the trial court is set aside by the High Court, and the accused is sentenced to death, or life imprisonment, or imprisonment of more than 10 years, then the right of appeal of the accused is treated as an absolute right subject to the provisions of [Articles 134 91](#)) (a) and 134 (1) (b) of the Constitution of India and [Section 379](#) of the Code of Criminal Procedure, 1973. In light of this, it is obvious that appeal against acquittal is considered on slightly different parameters compared to an ordinary appeal preferred to this Court. When an accused is acquitted of a criminal charge, a right vests in him to be a free citizen and this Court is very cautious in taking away that right. The presumption of innocence of the accused is further strengthened by the fact of acquittal of the accused under our criminal jurisprudence. The courts have held that if two views are possible*



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on the evidence adduced in the case, then the one favourable to the accused, may be adopted by the Court. However, this principle must be applied keeping in view the facts and circumstances of a case and the thumb rule is whether the prosecution has proved its case beyond reasonable doubt. If the prosecution has succeeded in discharging its onus, and the error in appreciation of evidence is apparent on the face of the record then the Court can interfere in the judgment of acquittal to ensure that the ends of justice are met. This is the linchpin around which the administration of criminal justice revolves. It is a settled principle of criminal jurisprudence that the burden of proof lies on the prosecution and it has to prove a charge beyond reasonable doubt. The presumption of innocence and the right to fair trial are twin safeguards available to the accused under our criminal justice system but once the prosecution has proved its case and the evidence led by the prosecution, in conjunction with the chain of events as are stated to have occurred, if, points irresistibly to the conclusion that accused is guilty then the Court can interfere even with the judgment of acquittal. The judgment of acquittal might be based upon misappreciation of evidence or apparent violation of settled canons of criminal jurisprudence.”

15. We have heard learned counsel for the parties and perused the whole record of the case.

ANALYSIS OF THE RECORD

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16. It is not in dispute that an application was filed by the State for framing additional charge under Sections 312 and 316 of IPC against the accused on the ground that from the evidence of Dr. Sheetal Jain, it is clear that a male foetus of four months was present at the time of her death. This application was, however, dismissed by the trial Court, vide order dated 22.02.2003 on the ground that Gurmail Singh, on whose statement, the case was registered, did not state in the F.I.R that Rajwinder Kaur was pregnant at the time of her death. There is also no evidence that the accused knew about the pregnancy of the deceased. This fact has come to the notice only at the time of post mortem examination. Thus, it was held that the accused have no intention to cause mis-carriage of the victim.

17. PW1 is the statement of Dr. Sheetal Jain, SMO Mini PHC, Bhasaur, who stated that on 06.05.2001, she was posted as M.O. in Civil hospital Malerkotla. On that day, she along with Dr. Harpreet Singh was member of the board and she was the in-charge of board and in that context, she conducted the post mortem examination of Rajwinder Kaur D/o Gurmail Singh w/o Balwinder Singh s/o Prem Singh r/o Chaunda, at the time of death residing at Rurkikala. She was about 22 years of age and her body was brought by Constable Balwinder Singh No. 2368 and body was identified by Gurmail Singh son of Sarwan Singh of Rurki Kala and also by Jagdev Singh s/o Sarwan Singh of village Rurkikalan. She stated that according to police papers death occurred on 05.05.2001 and post mortem was conducted on 6.5.2001 at 10.35 A.M. As per the information furnished by police, the death was due to ingestion or intake of poisonous substance. On examination of the body by her, the length of body was 162 cm. The body was of a thinly built lady. Her eyes and mouth were closed, rigorous mortis was present. P.M. staining was present. The present body bearing were: Green Butidar Kameez, Salwar Yellow coloured with

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yellow buti. The brain membrane was found to be congested. On examination of Thorax, its walls ribs cartilages and other were found to be healthy and congested. Right side of heart contain blood while left side empty. On examination of abdomen, its walls and other abdominal viscera, all were found to be healthy and congested. Stomach and its contents were found to be healthy contain about 50 ML of fluid. On examination of organs of generation external and internal: Uterus, gravid enlarged one finger below the umbilicus, a male foetus about four month old was present, uterus found to be ruptured and pelvis was found to contain blood and blood clots. The cause of death was declared after the receipt of chemical examiner report

18. The following articles were handed over to police after PostMortem examination:

1 sutured dead body of the deceased, All police papers duly signed from page no. 1 to 23, a copy of PM report, a bundle of cloth of deceased, a sample of seal-

Jar no. 1 contained stomach and its contents.

Jar no. 2 contained small and large intestines.

Jar no. 3 contained liver.

Jar no. 4 contained spleen.

Jar no. 5 contained Kidney.

Jar no. 6 contained preservative. (conc. solution of common salt).

Vial no. 7 contains blood. All these were put in a box which were signed and sealed bearing 16 in number, having mark SK'.

19. Dr. Sheetal Jain, in her cross examination stated that the cause of death was due to combined effect of phosphine a constituent of aluminium phosphide found in the viscera and excessive haemorrhage due to the injury to the uterus. She further stated that no external mark of injury was found on the dead body. The smell of phosphide is pungent. The aluminium phosphide

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is used for suicide purposes. Aluminumphosphate causes congestion of viscerae. She further stated that the possibility of bleeding due to congestion cannot be ruled out. The possibility of the injury to uterus by fall also cannot be ruled out.

20. Ex PF is FSL report and as per this report, Aluminium phosphide a pesticide was found in the contents of exhibits No. I & II. Phosphine a constituent of aluminium phosphide was found in the contents of exhibits No. III, IV, V & VII. No poison was found in the contents of exhibit No VI.

21. Ex.PB/2 is the copy of FIR, which was registered on the above statement of Gurmail Singh-PW2. Ex-PC is the copy of inquest report, wherein the cause of death has been given as eating injurious thing or drink. As per site plan, Mark A is the place where the dead body of Rajwinder Kaur was lying in the house of Prem Singh.

22. Ex PA is the copy of Post Mortem Report wherein as per opinion furnished by the police, there is intake of poisonous substance by the deceased-Rajwinder Kaur. Ex PD is the copy of letter to EMO written by ASI Dev Raj, P.S. Amargarh regarding post mortem of the dead body.

23. Ex PE is the copy of rough site plan wherein it is shown that the dead body of Rajwinder Kaur (since deceased) was lying on the bed in the porch at the residential house of Prem Singh.

24. Ex PG is the letter to SHO, Malerkotla wherein it has been stated that the cause of death is combined effect of Phosphide a constituent of Aluminium Phosphide found in the contents of exhibits No. III, IV, V & VII and excessive haemorrhage due to injury to the uterus.

25. Ex PJ is the Scaled Site plan, as per which the dead body of Rajwinder Kaur was lying on the porch on bed in the residential house of Prem Singh

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26. Ex PK is the affidavit of MHC Bikkar Singh, who stated that on 06-05-2001, he was posted as MHC at P.S. Amargarh. On 06-5-2001 Constable Balwinder Singh No. 2368 had deposited with him in the Malkhana, one parcel of viscera which was sealed with sixteen seals of KJ along with one envelop sealed with seven seals of SKJ and one parcel of the clothes sealed with the seal 'CJ' after Post Mortem examination of the dead body of Rajwinder Kaur from Civil Hospital, Malerkotla. He stated that on 10-5-2001 vide rod number 115 of the above said case consisting one parcel of Viscera sealed with 16 seal of 'SKJ', one envelop sealed with 7 seals of 'SKJ' were taken out from the Malkhana and handed over to Constable-Balwinder Singh 2368 for depositing the same into the office of Chemical Examiner, Patiala. On 10-5-2001 Constable-Balwinder Singh 2368 had deposited the above said case property into the office of Chemical Examiner, Patiala and obtained the rod and receipt. On the same day on return to the Police Station, rod & receipt were handed over to him and he attached with the record.

27. Ex PL and PM are the affidavits of Constable Balwinder Singh No. 2368, who stated that on 10-5-2001, he was deputed on general duty in Police Station-Amargarh. On 10-5-2001 MHC Bikkar Singh, vide R/C 115 dated 10-5-2001, the case property of the above said case i.e. one parcel of Viscera sealed with 16 seals of 'SKJ', one envelope affixed 7 seal of SKJ had taken out from the Malkhana and handed over the same to him to deposit the same in the office of Chemical Examiner, Patiala. He further stated that as per the direction of MHC, he had deposited the case property of the above said case on the same day in the office of Chemical Examiner, Patiala and obtained the receipt thereof. He stated that the receipt of the case property was handed over to MHC on the same day who attached the same with the record. He further stated that on 05-05-2001, he

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was posted on general duty at Police Station, Amargarh. On 05-05-2001, he was present at the house of Prem Singh son of Bachan Singh, Mistri, resident of Chaunda along with ASI Dev Raj. On the same day, ASI Dev Raj recorded the statement of Gurmail Singh son of Sarwan Singh, Mistri, resident of Rurkikala and got the case registered and handed over the dead body along with papers of inquest report for conducting the Post-Mortem examination from Civil Hospital, Malerkotla was sent under his supervision. On that day the SMO, did not meet due to late hours in the night. On the next day 06-05-2001 after marking the paper, got conducted the Post mortem of dead body and the dead body was handed over to the heirs and obtained receipt thereof. The doctor handed over to him one parcel of Viscera affixing seals of 'SKJ' and one parcel of clothes sealed with the seal 'SKJ'. The same were deposited with MHC Bikkar Singh in the Malkhana and the receipt was also handed over to the MHC.

28. Ex PW2 is the statement of complainant-Gurmail Singh son of Sarwan Singh, Mistri, resident of Rurki Kalan, on whose statement, the FIR was registered against the accused persons. He stated that he is residing on the above said address and doing the work of black smith. He has two sons, out of which one is married and another is un-married. He has also two daughters. The eldest one Kamaljit Kaur is married with Baljinder Singh son of Baldev Singh, mistri resident of Village Neevrabbon and the second one namely Rajwinder Kaur married to Balwinder Singh son of Prem Singh, mistri, resident of Chaunda on 02-12-1999, who has one son aged about 6/7 month. From the very beginning his son-in-law Balwinder Singh gave beating two three times and left her to his village Rurki Kalan. His daughter narrated the whole incident to him that her mother-in-law Amarjit Kaur, Father-in-law Prem Singh, son-in-law Balwinder Singh and younger brother of his husband Kulwinder Singh @ Charni always

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stated at the time of beating that she should bring scooter and more dowry from her father, he alongwith his village Ex-Sar panch Acchra Singh visited village Chaunda to meet Prem Singh (Father-in-law of his daughter) and enquired from him why they are beating his daughter Rajwinder Kaur. Prem Singh also raised a demand of scooter and more dowry from him. He told Prem Singh that he is unable to give more dowry. He then consoled his daughter and came back to his village Rurki-Kalan. At about 11-00 A.M, Zora Singh son of Ajaib Singh of their village came to his house and gave message that he has received message on telephone from un-known person that his daughter Rajwinder Kaur is in serious condition. Upon this, he and his brother Jagdev Singh proceeded to village Chaunda to see his daughter. His daughter Rajwinder Kaur had already died. Foaming was oozing out from her mouth and people were also gathered there. Due to rush, the family members escaped from the spot. He narrated the whole incident on telephone to his house at village Rurki Kalan. Upon this, his brother and Ex-Sarpanch Acchra Singh and other people of their village came to village Chaunda. He stated that his daughter has been killed by Prem Singh (Father-in-law) Amarjit Kaur (Mother-in-law) Balwinder Singh-husband, Kulwinder Singh @ Charni (Younger brother of husband) by giving her some poisonous substance for not bringing more dowry.

29. In cross examination, he submitted that the mediator was younger brother of Davinder Singh. The village of the accused is at a distance of 7/8 Kms from the village Rurki Kalan. The engagement ceremony took place after he had made inquiries. He had great love for his daughter Rajwinder Kaur (since deceased). He stated that he engaged his daughter after making enquiries for 5/6 months. He engaged his daughter after having satisfied about the character of the accused and their status. Neither he nor the accused owned agriculture land. He

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married his daughter with happiness. He further stated that the accused accepted his daughter with happiness. The accused were satisfied with the dowry given by him at the time of marriage. Rajwinder Kaur was matriculate. Accused Balwinder Singh is a scooter mechanic. He is not educated. Further stated that Rajwinder Kaur never complained him and used to say that she was leading happy. But, after 5-6 months of the birth of son to her, the accused started beating her. He stated that his daughter never expressed her wishes to marry in affluent family, before the marriage. Both the families celebrated the birth ceremony of son to Rajwinder Kaur. He stated that once, Rajwinder Kaur was beaten by Balwinder Singh, who demanded the scooter. He stated that he did not remember the month and year when Rajwinder Kaur was beaten. He did not tell the police and panchayat and or any other higher authority about the beatings given to his daughter. He only informed the Sarpanch of his village. The accused already possessed scooter before the marriage. At the time of occurrence, the accused party possessed three scooters. Balwinder Singh had good income from the scooter work-shop. He further stated that Prem Singh-accused is working as Jr. Engineer in Punjab State Electricity Board. Kulwinder Singh-accused work with his brother Balwinder Singh. He was not student. He further stated that his income is Rs. 3000/- per month. He has no income from any other business. He stated that he did not bring Rajwinder Kaur along with him when she was beaten because Prem Singh had assured him that he would make Balwinder Singh understand. He was satisfied with the reply. He stated that this happened six months before the occurrence. Thereafter, he brought Rajwinder Kaur with him on the eve of Shivratri and at that time, she told him about the maltreatment given to her by the accused. After a week, Kulwinder Singh came and he sent back Rajwinder Kaur with him. He was satisfied. He stated that his daughter also

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told her mother about the mal-treatment given to her by the accused. After the Shivratni, he visited her house after a month or 20 days. Rajwinder Kaur met him for the last time 3 months before the occurrence. During this period of 3 months, he received telephone message from his daughter about the mal-treatment. He took sarpanch along with him to the accused a week before the occurrence. He further stated that he came back after leaving Rajwinder Kaur having satisfied. The son of Rajwinder Kaur is with the accused. They never demanded the custody of son of Rajwinder Kaur. He got the telephone connection after the occurrence. He further stated that he had received the message through Jora Singh, at 10 a.m. He then along with his brother reached the house of the accused. The dead body of his daughter was lying in the verandah on the cot. He stated that the residents of the village were present there. At the time of occurrence Prem Singh was posted at Soundpur. All the accused were present, when he reached the house of the accused. He did not go to the police station but, gave telephone message to his brother. He further stated that, his wife and other relations reached there. The police reached the spot at 2.15 p.m. The police inspected the dead body. The Thanedar stated that it appeared the girl had died due to poison. The Thanedar also asked us to remove the ornaments from the dead body, and their women folk removed the ornaments. He further stated that the statement was recorded by the police after half an hour on reaching the spot. His wife was not interrogated by the police, nor she herself made statement to the police. The statement of his brother was recorded after his statement. He stated that the police said that it was a dowry death case. The police also said that you have to level allegation of dowry demand. After this, his statement was recorded. Statement of Acchra Singh was recorded, after his statement. He did not become angry on seeing the dead body. He stated that it is incorrect to

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suggest that his daughter consumed some poisonous things by mistake and the accused have been falsely implicated. He became perplexed on seeing the dead body, of his daughter. It is incorrect that having lost his temper, he fabricated this story. He submits that it is incorrect that the accused never demanded dowry nor maltreated the deceased.

30. PW3 is the statement of Jora Singh s/o Ajaib Singh aged 35 years, agriculturist, r/o Rurki Kalan, who stated that on 5.5.2001, he received telephone message from Village Chaundah that the condition of daughter of Gurmail Singh who was married in Chaundah was serious, and her parents be immediately sent. He then, told this thing to Gurmail Singh. His statement was recorded by the police.

31. PW4 is the statement of Achhra Singh s/o Kapoor Singh s/o Mihan Singh aged: 48 years, agriculturist, r/o Rurki Kalan, who stated that he is ex-sarpanch of the village Rurki- Kalan. Rajwinder Kaur daughter of Gurmail Singh of their village was married to Balwinder Singh accused of village Chaundha, on 2.12.99. A week before the occurrence, Gurmail Singh told him that his son-in-law Balwinder Singh, his younger brother Kulwinder Singh, his father Prem Singh and mother-Amarjit Kaur accused now present in Court demanded scooter and other articles of dowry from his daughter and maltreated her for not bringing the same. They then, went to village Chaundha and met Prem Singh accused. He stated that the accused stated that if Rajwinder Kaur has to be rehabilitated, scooter and other articles are to be given to them. Gurmail Singh replied that he was not in a position to give a scooter and other article, and after advising Rajwinder Kaur they came back. He stated that on 5-5-2001, brother of Gurmail Singh told him that Rajwinder Kaur has been murdered, then, he along with other respectables of the village went to village Chaundha Police

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was present there and recorded the statement of Gurmail Singh. His statement was recorded later on. He attested the statement of Gurmail Singh.

32. In his cross examination, he stated that at the time of the marriage, Gurmail Singh had given dowry according to his financial position. He further stated that Gurmail Singh did not tell him that the accused demanded dowry at the time of marriage. The accused Prem Singh is working as Junior Engineer in PSEB. Balwinder Singh accused used to run shop of repair of scooter etc. He stated that he has not seen scooters with the accused. He cannot say whether accused owned two scooters at the time of marriage of Rajwinder Kaur. He cannot say whether at the time of occurrence, the accused possessed three scooters having registration No. PB.10/B 6140, PB-13-5320, PB-28/1356. He stated that Gurmail Singh told him about the demand a week before the occurrence. Before that, he never talked with him about the demand of dowry. He stated that his house is inside in the village, while house of Gurmail Singh is situated outside the village. He stated that he does not know whether Rajwinder Kaur and her husband used to visit Gurmail Singh or not. He does not know who used to come to the house of Gurmail Singh. Gurmail Singh do welding work. The whole village including Gurmail Singh is his supporters. He stated that only he and Gurmail Singh had gone to the house of the accused a week before the occurrence & tea was served by the accused. He stated that Gurmail Singh advised her daughter, however he did not know what talk took place between the father and daughter. On return to the village, they had no talk with any body about this matter. After that day, he has no talk with Gurmail Singh or his daughter. His statement was recorded by the police on 31.7.2001. He stated that on 5.5.2001, his statement was not recorded by the police nor he gave the statement to the police. It is incorrect that he never went with Gurmail Singh to the house of

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accused nor the accused demanded the scooter. It is also incorrect that being resident of the village of Gurmail Singh, he was deposing falsely.

33. PW5 is the statement of ASI Dev Raj, Police lines, Fatehgarh Sahib, P.S. Amargarh, who stated that on that day, he received telephone message from village Chaundha about the death of Rajwinder Kaur, he then, along with other officials, reached the house of accused. Gurmail Singh met him. He made statement Ex.PB before him which he recorded correctly. He stated that Gurmail Singh signed it in token of its correctness. He stated that he went to police station along with his endorsement Ex.PB/1 and there formal FIR EX.PB/2 was recorded by MHC Bikkar Singh. He stated that he prepared inquest report Ex.PC and sent the dead body for post mortem examination, through Constable Balwinder Singh, vide his request Ex.PD. He then prepared rough site plan Ex.PE and recorded the statement of the witnesses. On 6-5-2001, Constable Balwinder Singh produced a parcel of the clothes containing/belonging of the deceased. He stated that on return to the police station, he deposited the case property with MHC. On 11.5.2001, he arrested all the four accused. He further stated that after completion of investigation and on receipt of report of Chemical Examiner, Ex.PF. the accused were challaned by him.

34. In his cross examination, he stated that he received information regarding the death of Rajwinder Kaur at 12.30 p.m. He reached the spot at 1.30 p.m. at village Chaunda, which is at a distance of 5/6 kilometers from Amargarh and is connected by a metalled road. He further stated that Achhra Singh PW was present when he reached the spot. About 60 persons were present at the spot. He did not see any tractor trolley near the spot. Except, the statement of Gurmail Singh PW, no other evidence came to his knowledge about the relations of accused with Rajwinder Kaur. He further stated that mother of Rajwinder Kaur

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never appeared before him. He did not interrogate mother of Rajwinder Kaur as he did not need the necessity of the same. He stated that he did not record statement of any neighbour of the accused. He recorded the statement of Achhra Singh on 31-7-2001. On 5.5.2001, Achhra Singh met him but, he did not record his statement on that day nor he himself gave statement before him. He stated that the house of the accused is situated in the Abadi. No dowry article was recovered by him from the possession of the accused. Gurmail Singh never gave list of dowry article for recovering the same. He also did not give list of dowry articles alleged to have been given by him in the marriage. He stated that it is incorrect that he was under pressure of the complainant party. It is also incorrect that he registered the case under the pressure of the complainant party. It is also incorrect that he partially investigated this case, and the accused have been falsely implicated.

35. PW6 is the statement of Gurnam Singh, Draftsman, Malerkotla, who stated that he holds diploma in architecture and mechanical and he has got experience of about more than 50 years. Site plan Ex.PJ is in his hand and he prepared it at the instance of Gurmail Singh. The marginal notes are in his hand and correct.

36. In his cross examination, he stated that the place of occurrence is situated in thickly population area. When he reached the house of Prem Singh, it was lying locked. The key was taken from the neighbourhood. He cannot tell the name of that neighbour. He stated that there were 2/3 trees in the court-yard. It is incorrect that he did not go to the spot and prepared the site plan at the instance of police.

37. PW7 is the statement of HC Gurcharn Singh, 894, P.S. Dirba, who stated that on 5-5-2001, he was posted in P.S. Amargarh and was working as



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additional MHC. On that day, at 12.15 p.m. he received telephonic message from Village Dhonda to the effect that Rajwinder Kaur had been murdered by her husband and her in laws. He stated that he conveyed the message to ASI Dev Raj.

38. In his cross-examination, he stated that he cannot tell the name of the persons who telephoned the police. He did not inquire his name from him. It is incorrect that no telephone message was received by him.

39. PW8 is the statement of HC Bikkar Singh, 605, City, P.S. Malerkotla, who stated that he tendered into evidence his affidavit, Ex. PK and it be read as his evidence.

40. In his cross examination, he stated that it is incorrect that he has given false evidence.

41. PW9 is the statement of Constable Balwinder Singh, 2368/Sangrur now P.S. Model Town, Hoshiaprrur, who stated that he tendered his affidavits, Ex. PL and Ex PM and it be read as his evidence in examination in chief.

42. In his cross examination, he stated that it is incorrect that he has sworn false affidavits.

43. Amarjit Kaur (mother-in-law) of the deceased in her statement under Section 313 Cr.P.C in answer to a question that if she want to say anything, has answered that she is innocent. Rajwinder Kaur took some poisonous things by mistake. They never maltreated her nor demanded any dowry. Gurmail Singh, on seeing the dead body of his daughter Rajwinder Kaur, became annoyed and got registered the present false case against them by levelling false allegations and she has been falsely implicated.

44. Balwinder Singh (husband) of the deceased in his statement under Section 313 Cr.P.C in answer to a question that if he want to say anything, has answered that he is innocent. Rajwinder Kaur took some poisonous things by

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mistake. They never maltreated her nor demanded any dowry. Gurmail Singh, on seeing the dead body of his daughter Rajwinder Kaur, became annoyed and got registered the present false case against them by levelling false allegations and he has been falsely implicated.

45. Prem Singh (father in law) in his statement recorded under Section 313 Cr.P.C, in answer to a question that if he want to say anything, has answered that he is innocent. Rajwinder Kaur took some poisonous things by mistake. They never maltreated her nor demanded any dowry. Gurmail Singh, on seeing the dead body of his daughter Rajwinder Kaur, became annoyed and got registered the present false case against them by levelling false allegations and he has been falsely implicated.

46. Kulwinder Singh (brother in law) in his statement recorded under Section 313 Cr.P.C, in answer to a question that if he want to say anything, has answered that he is innocent. Rajwinder Kaur took some poisonous things by mistake. They never maltreated her nor demanded any dowry. Gurmail Singh, on seeing the dead body of his daughter Rajwinder Kaur, became annoyed and got registered the present false case against them by levelling false allegations and he has been falsely implicated.

47. DW1-Jarnail Singh s/o Mohinder Singh s/o Rura Singh, in his statement, stated that he know all the accused now present in court. They are his neighbours. Balwinder Singh accused was married in village RurkiKalan with the daughter of Gurmail singh. Rajwinder Kaur was her name. He stated that the accused kept Rajwinder Kaur with love and affection and they never maltreated her. They never demanded anything. He was on visiting terms with the accused. He stated that Rajwinder Kaur never complained him nor her father ever



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complained him about the behaviour of the accused. The accused never demanded any dowry from Rajwinder Kaur.

48. During cross-examination, he stated he was posted in Punjab State Electricity Board, Patiala since July 2002. Earlier, he was posted at village Chaundha. He stated that Prem Singh accused is also posted in PSEB. At the time of occurrence, Prem Singh accused was posted at Samaspur. Village Chaundha, is at a distance of 25 Km from Samaspur. He had attended the marriage of Balwinder Singh. Rajwinder Kaur was cremated in village Rurki Kalan. He did not attend the cremation ceremony. Rajwinder Kaur gave birth to one child. He stated that it is incorrect that accused maltreated Rajwinder Kaur and demanded scooter in dowry. It is incorrect to suggest that he is deposing falsely being the colleague of Prem Singh.

49. DW2 is the statement of Harbans Singhs/o Harchand Singh s/o Bakhtour Singh, aged 42 years, agriculturist, r/o Village Chaundha, who in his statement stated that he knows all the accused now present in the Court, they belong to his village. Balwinder Singh accused was married to Rajwinder Kaur in village Rurki Kalan. They were living happily. He stated that he never received any complaint. He is member of the Panchayat Samiti, Malerkotla. No complaint regarding dowry and maltreatment was received.

50. In his cross-examination, he stated that Rajwinder Kaur was married 4/5 years before the occurrence. She had got only male child. He was in the village on the day when she died. He stated that he came to know about the death at about 10:00 a.m. He went to the spot and saw the dead body of Rajwinder Kaur. He cannot say whether she was pregnant or not. She had taken something. When he saw the dead body, no froth was coming out from the mouth of deceased Rajwinder Kaur. He stated that he knows the parents of Rajwinder Kaur.



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He never met father of Rajwinder Kaur, however, he has seen him passing. Rajwinder Kaur never told anything to him nor she met him. It is incorrect to suggest that accused demanded scooter and maltreated Rajwinder Kaur and she died. He stated that he know Achhra Singh of village Rurki. It is incorrect that he is deposing falsely being co-villager of the accused

REASONING GIVEN BY LEARNED TRIAL COURT FOR ACQUITTING THE ACCUSED

51. Learned Trial Court acquitted the accused of the charges after appreciation of evidence on the ground that ingredients of Section 304- B IPC were not proved. The relevant portion of the judgment is reproduced as under:-

14. No doubt, Rajwinder Kaur died unnatural death within seven years of her marriage. But, as regards, the cruelty and harassment in connection with undue demand for dowry, we have got nothing/the testimony of her father Gurmail Singh. According to FIR..After the marriage, Balwinder Singh accused beat Rajwinder Kaur 2/3 times and she used to tell her father about the demand of scooter by the accused. But, there is no evidence that when Balwinder Singh beat Rajwinder Kaur. No complaint was ever made to any authority nor any panchayat was convened. No date, month and year is mentioned in FIR. when she was beaten. While appearing date, in the Court an PW2, Gurmail Singh could not tell/month or year when Rajwinder Kaur was beaten. He admitted that any he did not lodge the report with the police. panchayat or higher any other/authority about the beatings given to his daughter Rajwinder Kaur. He admitted that he only informed Sarpanch of his village. But, according to Achhra Singh Sarpanch PW4, Gurmail Singh told him about the demand a week before the occurrence and before that, he

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never talked with him about the demand of dowry. Meaning thereby that Gurmail Singh did not tell anybody about the maltreatment or cruelty in connection with demand of dowry. The evidence regarding the beatings given to Rajwinder Kaur 2/3 times, is, therefore, not believable. As regards, the demand of dowry, a week before the occurrence, suffice it to say that in FIR., it is not mentioned that a week before the occurrence, they went to the accused. No doubt, they PW2 Gurmail Singh & PW4 Achhra Singh deposed that they went to the accused and asked Prem Singh as to why his daughter Rajwinder Kaur was given beatings upon which Prem Singh demanded scooter, but, Gurmail Singh showed his inability and came back after advising his daughter Rajwinder Kaur to understand the situation. The conduct of Gurmail Singh is highly improbable. If, the accused was adamant, he would CMO not have left his daughter Rajwinder Kaur there and brought her alongwith him and would have lodged report with the police. There appears to be no reason for Gurmail Singh, left his daughter Rajwinder Kaur there, when the accused still demanded dowry. Rather, Girmail Singh PW2 admitted that he was satisfied with the reply of Prem Singh accused Balwinder Singh to who assured him saying that he would make/understand According to Achhra Singh PW4, he does not know what talk took place between father (Gurmail Singh & daughter Rajwinder Kaur. Admittedly, no demand was made at the time of marriage. Gurmail Singh admitted that his daughter Rajwinder Kaur was accepted with happiness by the accused at the time of marriage. He further admitted that first, Rajwinder Kaur never complained to him and used to say that she was leading happy



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life, but, after 5/6 months of the birth of son to her, accused started beating her. However, there is no reason for the accused, started/beating her, if the accused was satisfied at the time of marriage and birth of son to her. Therefore, there appears to be no reason for the accused to maltreat her and give beatings to her. 1 Curmail Singh PW2 admitted that both the families celebrated the birth ceremony of son to Rajwinder Kaur. Moreover, Gurmail Singh admitted that the accused possessed two scooters before the marriage and the accused possessed three scooters at the time of occurrence. He further admitted that accused Balwinder Singh had good income from the scooter work-shop. He further admitted that his father Prem Singh accused was working as Junior Engineer in Punjab State Electricity Board. Since, the accused have d good income and already possessed three scooters, there. seems to be no reason or ground to demand scooter from Rajwinder Kaur and maltreated her. Gurmail Singh further admitted that at the time of Shivratri, he had brought Rajwinder Kaur with him and then, she told him about the maltreatment given to her by the accused. He also admitted that after a week. Balwinder Singh accused came and he sent back Rajwinder Kaur with him. If, the accused actually demanded scooter, therefore, there appears to be no reason along for Balwinder Singh to bring back Rajwinder Kaur/with him. This fact shows that there was no maltreatment given to Rajwinder Kaur by Bhwinder Singh accused. Further, more, the story of demand for dowry, a week before the occurrence, is belied by the testimony of Gurmail Singh himself. Gurmail Singh admitted inthe cross-examination that Rajwinder Kaur

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met him for the last time 3 months before to the occurrence. Meaning thereby that he did not go to the house of the accused a week before the occurrence as alleged. Moreover, Gurmail Singh could not tell as to when she was maltreated. According to him, once, Rajwinder Kaur was beaten by Balwinder Singh, but, he could not tell date, month & year, when Rajwinder Kaur was beaten. Gurmail Singh did not state that the remaining accused maltreated Na & beat her. Therefore, there is every doubt, that Rajwinder Kaur was beaten for not bringing more dowry. Gurmail Singh further admitted that the thanedarteld him that it was a dowry death case and he (Gurmail) has to level allegations of dowry demand and after this, his statement was recorded. It, therefore, appears that Gurmail Singh has levelled false allegations of demand for dowry at the instance of police. Thus, when the prosecution evidence is considered admitted that at the time of Shivratri, he had brought Rajwinder Kaur with him and then, she told him about the maltreatment given to her by the accused. He also admitted that after a week, Balwinder Singh accused came and he sent back Rajwinder Kaur with him. If, the accused actually demanded scooter, therefore, there appears to be no reason along for Balwinder Singh to bring back Rajwinder Kaur with him. This fact shows that there was no maltreatment given to Rajwinder Kaur by Bhwinder Singh accused. Further, more, the story of demand for dowry, a week before the occurrence, is belied by the testimony of Gurmail Singh himself. Gurmail Singh admitted in the cross-examination that Rajwinder Kaur met him for the last time 3 months before to the occurrence. Meaning thereby that he did not go to the



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house of the accused a week before the occurrence as alleged. Moreover, Gurmail Singh could not tell as to when she was maltreated. According to him, once, Rajwinder Kaur was beaten by Balwinder Singh, but, he could not tell date, month & year, when Rajwinder Kaur was beaten. Gurmail Singh did not state that the remaining accused maltreated Na & beat her. Therefore, there is every doubt, that Rajwinder Kaur beaten for not bringing more dowry. Gurmail Singh further admitted that the thanedar told him that it was adowry death case and he (Gurmail) has to level allegations of dowry demand and after this, his statement was recorded. It, therefore, appears that Gurmail Singh has levelled false allegations of demand for dowry at the instance of police. Thus, when the prosecution evidence is considered in the peculiar facts and circumstances of the case, it is not found of the requisite standard to hold that Rajwinder Kaur was maltreated in connection with demand of dowry soon before the occurrence. The prosecution has, therefore, failed to prove these main ingredients of Section 304-B IPC and as such, it cannot be said that it is a case of dowry death. Since, the prosecution has failed to prove the ingredients of under Section 304-B IPC, no presumption can be raised against the accused.”

ANALYSIS OF THE JUDGMENT OF TRIAL COURT

52. The learned trial Court has observed that Rajwinder Kaur died unnatural death within 7 years of her marriage. Further it has been observed that Gurmail Singh father of the deceased in his FIR stated that after marriage, Balwinder Singh-accused gave beatings to Rajwinder Kaur 2-3 times and she used to tell him about the demand of scooter by the accused. However, no date,

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month & year of the beating given to Rajwinder Kaur by the accused was given by Gurmail Singh (father of the deceased). Further no formal complaint was ever made to police authority or any Panchayat was convened regarding the incidents of beatings to Rajwinder Kaur. The learned trial Court failed to appreciate the very fact that normally parents do not want to make/lodge complaints against their husband/in-laws because they want things should amicably settle down and their daughter should happily settle in her matrimonial home. Therefore, the reasoning given by the learned trial Court with respect to no date, month & year of the beating to Rajwinder Kaur (since deceased), was given by Gurmail Singh, is baseless/unfounded. Rather it is also pertinent to note that that Acchra Singh-PW4 in his statement stated that Gurmail Singh told him about the demand for scooter a week before the incident and prior to that he had never talked about the demand of dowry. The learned trial Court's observation that Gurmail Singh never informed anyone about the dowry demand or failed to lodge any complaint regarding the maltreatment of her daughter, is unreasonable. As previously noted, the testimony of Acchra Singh indicates that Gurmail Singh did, in fact, mentioned the dowry demands (demand for a scooter) shortly before the incident.

53. The observation of the learned trial Court regarding the incident that Gurmail Singh went to meet her daughter as per deposition of PW4 Acchra Singh and stated that he along with Gurmail Singh went to the house of the accused and asked Prem Singh why his daughter had been beaten, in response Prem Singh demanded a scooter but Gurmail Singh expressed his inability to fulfil the demand and came back after advising his daughter to understand the situation. The learned trial Court has wrongly taken the statement of Gurmail Singh to be highly improbable.

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54. The trial Court failed to appreciate the societal norms in India during 2001 that at that time, parents always tried their level best to settle their daughters in their matrimonial home. Further it has been observed by the trial Court that no reasoning was given why Gurmail Singh (father of the deceased) did not lodge any complaint or reported the matter to the police that the accused demand scooter. When Gurmail Singh had admitted that he was satisfied with the response of Prem Singh (father-in-law) that he would make Balwinder Singh understand regarding the demand of a scooter.

55. The learned trial Court has taken into consideration the first part of the statement of Gurmail Singh, wherein he admitted that his daughter was accepted with happiness by the accused at the time of the marriage and she never complained to him and used to say that she was happy in her life but after 5-6 months of the birth of her son, the accused started beating her. However, the learned trial Court failed to appreciate the very fact that some women's do not want to disturb their parents by telling the maltreatment/harassment given to them by the accused persons. In the present case, after the birth of the son to Rajwinder Kaur, she could not bear the harassment/cruelty at the hands of the accused therefore, she decided to tell her father about the same. It cannot be said that initially if the girl is staying happily in her matrimonial home, thereafter, she will not be beaten by the accused. The learned Court's finding that a woman, who initially appears happy in her matrimonial home cannot be later subject to domestic violence, is incorrect and overlooks the realities of domestic violence.

56. The learned trial Court has observed while acquitting the accused that Gurmail Singh in his statement has admitted that both the family celebrated the birth of Rajwinder Kaur's son, therefore it cannot be said that Rajwinder Kaur was ill-treated by the accused. This reasoning of the learned trial Court is

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baseless. Normally the lady of the house would celebrate the birth of her baby or for that matter any festival or occasion. Such participation does not, in itself, negate the possibility of her being subjected to maltreatment/harassment by the accused in connection with demands of dowry.

57. The learned trial Court has acquitted the accused on the ground that Gurmail Singh admitted that accused has good income from her scooter workshop and his father is working as Junior Engineer in PSEB. Thus, it has been held that since the accused is having good income, therefore, it cannot be said that they demanded scooter from Rajwinder Kaur (since deceased). However, the reasoning given by the trial Court is not justifiable and insufficiently substantiated.

58. The trial Court has taken the ground that Gurmail Singh father of the deceased admitted that on Shivratri, he had brought Rajwinder Kaur with him and on that day, Rajwinder Kaur told him about the maltreatment given to her by the accused and after a week, Balwinder Singh went to take her back from her house and Gurmail Singh sent her back with Balwinder Singh. If the accused actually demanded scooter then Balwinder Singh should not have brought her back to the matrimonial home. Further, the trial Court observed that there was no maltreatment given to Rajwinder Kaur by Balwinder Singh.

59. Since it is a case of dowry death within a period of 7 years of marriage, initially the parents think that the matter would be resolved that everything will be alright. They try to make the husband and in-laws understand regarding their inability and capacity to satisfy their demand of dowry. The trial Court observed that no time, month and year was given when the deceased was maltreated by her in-laws. The learned trial Court treated the statement of Gurmail Singh as concocted story, as Gurmail Singh in his cross-examination has



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stated that he was told by the police to level allegations against the accused regarding demand of dowry. Therefore, the trial Court acquitted the accused on the ground of lack of evidence has come on record regarding the maltreatment by the accused and held that the prosecution has failed to prove the ingredients of Section 304-B of IPC.

Conclusion

60. Since the present appeal is filed against the acquittal of respondent of the charges under Sections 304-B of the Indian Penal Code, 1860, it would be relevant to reproduce the relevant provisions of IPC and The Evidence Act, 1872 for proper adjudication of the present case.

“304-B. Dowry death. (1) *Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.*

Explanation For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) *Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."*

113-B. Presumption as to dowry death: *When the question is whether a person has committed the dowry death of a woman and it is shown that*



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soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation. - For the purpose of this section, "dowry death" shall have the same meaning as in Section 304-B of Indian Penal Code (45 of 1860)].

61. Therefore, now it is to be determined by this Court, that whether the ingredients of Section 304-B IPC, are fulfilled in the present case as per the evidence adduced.

62. To sustain the conviction under Section 304-B IPC, the following essential ingredients are to be established:-

(i) the death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance;

(ii) such a death should have occurred within seven years of her marriage;

(iii) she must have been subjected to cruelty or harassment by her husband or any relative of her husband;

(iv) such cruelty or harassment should be for or in connection with demand of dowry; and

(v) such cruelty or harassment is shown to have been meted out to the woman soon before her death";

63. In a recent judgment of **SATBIR SINGH AND ANOTHER VS. STATE OF HARYANA, (2021) 6 SCC 1**, the Hon'ble Supreme Court has dealt with dowry death case. The relevant portion of the same are reproduced as under:-



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“9. The first contentious part that exists in the interpretation of Section 304-B, IPC relates to the phrase ‘soon before &’ used in the Section. Being a criminal statute, generally it is to be interpreted strictly. However, where strict interpretation leads to absurdity or goes against the spirit of legislation, the courts may in appropriate cases place reliance upon the genuine import of the words, taken in their usual sense to resolve such ambiguities. [refer Commissioner of Customs (Import), Mumbai v. Dilip Kumar & Company, (2018) 9 SCC 1, State of Gujarat v. MansukhbhaiKanjibhai Shah, 2020 SCC OnLine SC 412]. At this juncture, it is therefore necessary to undertake a study of the legislative history of this Section, in order to determine the intention of the legislature behind the inclusion of Section 304-B, IPC.

10. Section 304-B, IPC is one among many legislative initiatives undertaken by Parliament to remedy a longstanding social evil. The pestiferous nature of dowry harassment, wherein married women are being subjected to cruelty because of covetous demands by husband and his relatives has not gone unnoticed. The Parliament enacted the Dowry Prohibition Act, 1961 as a first step to eradicate this social evil. Further, as the measures were found to be insufficient, the Criminal Law (Second Amendment) Act, 1983 (Act 46 of 1983) was passed wherein Chapter XXA was introduced in the IPC, containing Section 498-A.

11. However, despite the above measures, the issue of dowry harassment was still prevalent. Additionally, there was a growing trend of deaths of young brides in suspicious circumstances



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following demands of dowry. The need for a stringent law to curb dowry deaths was suomotu taken up by the Law Commission in its 91st Law Commission Report. The Law Commission recognized that the IPC, as it existed at that relevant time, was insufficient to tackle the issue of dowry deaths due to the nature and modus of the crime. They observed as under:

“1.3 if, in a particular incident of dowry death, the facts are such as to satisfy the legal ingredients of an offence already known to the law, and if those facts can be proved without much difficulty, the existing criminal law can be resorted to for bringing the offender to book. In practice, however, two main impediments arise –

- (i) either the facts do not fully fit into the pigeonhole of any known offence; or*
- (ii) the peculiarities of the situation are such that proof of directly incriminating facts is thereby rendered difficult*
"

12. Taking into consideration the aforesaid Law Commission Report, and the continuing issues relating to dowry related offences, the Parliament introduced amendments to the Dowry Prohibition Act, as well as the IPC by enacting Dowry Prohibition (Amendment) Act, 1986 (Act 43 of 1986). By way of this amendment, Section 304-B, IPC was specifically introduced in the IPC, as a stringent provision to curb the menace of dowry death in India.

*13. **Shrimati Margaret Alva**, who presented the Amendment Bill before Rajya Sabha observed as follows:*



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This is a social evil and social legislation, as I said cannot correct everything. We are trying to see how and where we can make it a little more difficult and therefore we have increased the punishment. We have also provided for certain presumptions because upto now one of our main problem has been the question of evidence. Because the bride is generally burnt or the wife is burnt behind closed doors in her in-laws home. You have never really heard of a girl being burnt while cooking in her mother's house or her husband's house. It is always in the mother-in-law's house that she catches fire and is burnt in the kitchen. Therefore, getting evidence immediately becomes a great bit problem. Therefore, we have brought in a couple of amendments which give certain presumptions where the burden of proof shifts to the husband and to his people to show that it was not a dowry death or that it was not deliberately done"

14. There is no denying that such social evil is persisting even today. A study titled "Global study on Homicide: Gender-related killing of women and girls", published by the United Nations Office on Drugs and Crime, highlighted that in 2018 female dowry deaths account for 40 to 50 percent of all female homicides recorded annually in India. The dismal truth is that from the period 1999 to 2016, these figures have remained constant. In fact, the latest data furnished by the National Crime Records Bureau



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indicates that in 2019 itself, 7115 cases were registered under Section 304-B, IPC alone.

15. Considering the significance of such a legislation, a strict interpretation would defeat the very object for which it was enacted. Therefore, it is safe to deduce that when the legislature used the words, “soon before” they did not mean “immediately before”. Rather, they left its determination in the hands of the courts. The factum of cruelty or harassment differs from case to case. Even the spectrum of cruelty is quite varied, as it can range from physical, verbal or even emotional. This list is certainly not exhaustive. No straitjacket formulae can therefore be laid down by this Court to define what exacts the phrase “soon before” entails.

16. The aforesaid position was emphasized by this Court, in the case of Kans Raj v. State of Punjab, (2000) 5 SCC 207, wherein the three-Judge Bench held that:

15.....Soon before” is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. .. In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. ... Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment



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based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough”

A similar view was taken by this Court in Rajinder Singh v. State of Punjab, (2015) 6 SCC 477.

17. *Therefore, Courts should use their discretion to determine if the period between the cruelty or harassment and the death of the victim would come within the term “soon before”. What is pivotal to the above determination, is the establishment of a “proximate and live link” between the cruelty and the consequential death of the victim.* 18. *When the prosecution shows that ‘soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry’ a presumption of causation arises against the accused under Section 113-B of the Evidence Act. Thereafter, the accused has to rebut this statutory presumption. Section 113B, Evidence Act reads as under:*

*“ **113-B. Presumption as to dowry death**-When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.*

Explanation. - For the purpose of this section, “dowry death”; shall have the same meaning as in section 304- B of the Indian Penal Code (45 of 1860”;



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19. *This Court, in the case of Bansi Lal v. State of Haryana, (2011) 11 SCC 359, emphasized the mandatory application of the presumption under Section 113-B of the Evidence Act once the ingredients of Section 304B of IPC stood proved:*

“19. It may be mentioned herein that the legislature in its wisdom has used the word “shall” thus, making a mandatory application on the part of the court to presume that death had been committed by the person who had subjected her to cruelty or harassment in connection with any demand of dowry. .. Therefore, in view of the above, onus lies on the accused to rebut the presumption and in case of Section 113-B relatable to section 304-B IPC, the onus to prove shifts exclusively and heavily on the accused.

..

20. *Therefore, in case the essential ingredients of such death have been established by the prosecution, it is the duty of the court to raise a presumption that the accused has caused the dowry death.”*

20. *Therefore, once all the essential ingredients are established by the prosecution, the presumption under Section 113-B, Evidence Act mandatorily operates against the accused. This presumption of causality that arises can be rebutted by the accused.*

21. *The usage of rebuttable presumption of causality, under Section 113-B, Evidence Act, creates a greater responsibility on Judges, defense and prosecution. They need to be extra careful during conducting criminal trials relating to Section 304-B, IPC. In order to address this precarious situation, procedural law has some safeguards, which merits mentioning herein.*



22. *It is a matter of grave concern that, often, Trial Courts record the statement of an accused under section 313, CrPC 1973 in a very casual and cursory manner, without specifically questioning the accused as to his defense. It ought to be noted that the examination of an accused section 313, CrPC, 1973 cannot be treated as a mere procedural formality, as it is based on the fundamental principle of fairness. This provision incorporates the valuable principle of natural “audi alteram partem”, as it enables the accused to offer an explanation for the incriminatory material appearing against him. Therefore, it imposes an obligation on the part of the Court to question the accused fairly, with care and caution. The Court must put incriminating circumstances before the accused and seek his response. A duty is also cast on the counsel of the accused to prepare his defense, since the inception of the trial, with due caution, keeping in consideration the peculiarities of Section 304-B, IPC read with Section 113-B, Evidence Act.*

24. *The second contentious part relating to Section 304-B IPC is that it does not take a pigeonhole approach in categorizing death as homicidal or suicidal or accidental, as was done earlier. The reason for such non categorization is due to the fact that death occurring “otherwise than under normal circumstances” can, in cases, be homicidal or suicidal or accidental. However, the Section 304-B, IPC endeavors to also address those situations wherein murders or suicide are masqueraded as accidents.*

25. *Therefore, if all the other ingredients of Section 304-B IPC are fulfilled, any death whether caused by burns or by bodily injury or*



occurring otherwise than under normal circumstances shall, as per the legislative mandate, be called a “dowry death” and the woman’s husband or his relative “shall be deemed to have caused her death”; unless proved otherwise. The section clearly specifies what constitutes the offence of dowry death and also identifies the single offender or multiple offenders who has or have caused the dowry death. [refer Maya Devi v. State of Haryana, (2015) 17 SCC 405, Shanti v. State of Haryana, (1991) 1 SCC 371]

** * * * **

38. At the cost of repetition, the law under Section 304-B, IPC read with Section 113-B, Evidence Act can be summarized below:

38.1. Section 304-B, IPC must be interpreted keeping in mind the legislative intent to curb the social evil of bride burning and dowry demand.

38.2. The prosecution must at first establish the existence of the necessary ingredients for constituting an offence under Section 304-B, IPC. Once these ingredients are satisfied, the rebuttable presumption of causality, provided under Section 113B, Evidence Act operates against the accused.

38.3. The phrase :soon before” as appearing in Section 304-B, IPC cannot be construed to mean `immediately before”. The prosecution must establish existence of “proximate and live link” between the dowry death and cruelty or harassment for dowry demand by the husband or his relatives.

38.4. Section 304-B, IPC does not take a pigeonhole approach in categorizing death as homicidal or suicidal or accidental. The



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reason for such non categorization is due to the fact that death occurring “otherwise than under normal circumstances” can, in cases, be homicidal or suicidal or accidental.

38.5. Due to the precarious nature of Section 304-B, IPC read with 113-B, Evidence Act, Judges, prosecution and defence should be careful during conduction of trial.

38.6. It is a matter of grave concern that, often, Trial Courts record the statement under section 313, CrPC, 1973 in a very casual and cursory manner, without specifically questioning the accused as to his defense. It ought to be noted that the examination of an accused under section 313, CrPC, 1973 cannot be treated as a mere procedural formality, as it based on the fundamental principle of fairness. This aforesaid provision incorporates the valuable principle of natural justice “audi alteram partem”; as it enables the accused to offer an explanation for the incriminatory material appearing against him. Therefore, it imposes an obligation on the court to question the accused fairly, with care and caution.

38.7. The Court must put incriminating circumstances before the accused and seek his response. A duty is also cast on the counsel of the accused to prepare his defense since the inception of the Trial with due caution, keeping in consideration the peculiarities of Section 304-B, IPC read with Section 113-B, Evidence Act.”

64. The first ingredient of Section 304B of IPC is that death of a women should be caused by the burn or bodily injury or otherwise than under normal circumstance. In the present case, as per chemical examiner report (Ex PF), the cause was death was due to combined effect of phosphide, a constituent of

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aluminium phosphide found in the viscera and excessive haemorrhage due to the injury to the uterus. Ex PF is FSL report and as per this report, Aluminium phosphide, a pesticide was found in the contents of exhibits No.I & II. Phosphine a constituent of aluminium phosphide was found in the contents of exhibits No. III, IV, V & VII. No poison was found in the contents of exhibit No VI.

65. As per the post mortem examination of Dr. Sheetal Jain, PW1, who conducted the Post Mortem of Rajwinder Kaur, the death was due to intake of poisonous substance.

66. A perusal of the evidence shows that the marriage of deceased Rajwinder Kaur with Balwinder Singh took place in December, 1999 and Rajwinder Kaur died on 05.05.2001 i.e within two years of her marriage. Ex PB/2 is the copy of FIR, which was registered on the statement of Gurmail Singh, father of Rajwinder Kaur (since deceased) and no discrepancy was found in his cross examination. The complainant-Gurmail Singh examined as PW2, who stated that his daughter Rajwinder Kaur (since deceased) was subjected to harassment for demand of dowry immediately before her death. The examination of the prosecution witness referred to above shows the demand of scooter. His statement thus cannot be disbelieved.

67. The statement of all the accused under Section 313 Cr.P.C is to the same effect that the deceased-Rajwinder Kaur took some poisonous substance by mistake, proves the unnatural death of the deceased-Rajwinder Kaur. Further a perusal of the medical report of the deceased shows that she was four months pregnant at the time of her death. No lady would take such painful step of administering poison to herself knowingly she was pregnant. It is only the circumstance which forces her to take such painful step. In the present case as



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well, a perusal of the record shows that she was harassed and given beatings by the husband and her in-laws for demand of dowry.

68. The defence witness i.e D.W.1 Jarnail Singh-neighbour of the accused, in his statement stated that the accused never maltreated Rajwinder Kaur (since deceased) and never demanded anything from her. He further stated that Rajwinder Kaur and her father never complained him about the behaviour of the accused. The accused never demand dowry from Rajwinder Kaur. This statement of D.W.1-Jarnail Singh seems to be tutored and unbelievable, since the deceased Rajwinder Kaur and his father would not tell about the harassment to the neighbour of the accused. Further his cross examination shows that he and accused-Prem Singh were posted in the same department i.e PSEB.

69. DW2 is also neighbour of the accused, who in his statement stated that no complaint regarding dowry and maltreatment was received. In his cross examination, he further stated that when he saw the dead body of Rajwinder Kaur, no froth was coming out of the mouth. Further in his cross examination, he stated that he know the parents of the deceased but on the other hand, he stated that he never met Gurmail Singh (father of the deceased). Therefore, in one line itself, there is contradiction in the above statement and thus, it cannot be relied upon.

70. In the light of the above findings of the Hon'ble Supreme Court and after perusing the relevant material and evidence available on record, we find that all the above assigned reasons by the learned trial Court concerned, to make a verdict of acquittal qua Balwinder Singh (husband of the deceased) i.e respondent No. 3, in respect of offences punishable under Section 304-B of the



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Code are completely infirm and the learned trial Court has committed a grave error in acquitting respondent No. 3/accused-Balwinder Singh under Section 304-B IPC. However, upon appreciation of facts and circumstances of the present case, we are of the opinion that offence under Section 304-B IPC is made out against Balwinder Singh-respondent No. 3, as the State has proved its case beyond shadow of reasonable doubt.

71. However, there are no direct allegations and cogent and convincing evidence against respondent No. 4/Amarjit Kaur (mother-in-law), respondent No. 2-Kulwinder Singh (brother-in-law). So far as Prem Singh-accused is concerned, though there was allegation of demand of dowry of a scooter on his part, but since the father of the deceased-Gurmail Singh in his cross examination admitted that on assurance given by respondent No. 1/ accused- Prem Singh, he left his daughter in her matrimonial home, therefore, this Court is of the considered view that there was no role on the part of Prem Singh in the demand of dowry, as such, he is to be given benefit of doubt. Hence, the impugned verdict of acquittal qua respondent No. 1, 2 and 4 as made on 03.03.2003, upon Sessions Case No.106 of 2001 by the learned Additional Sessions Judge (Fast Track Court) Sangrur, is hereby affirmed.

72. Accordingly, the verdict of acquittal qua respondent No. 3 is quashed and set aside. In consequence, accused/respondent No. 3-Balwinder Singh is held guilty for committing the offence punishable under Section 304-B IPC, and, is convicted accordingly. The accused/respondent No. 3 is directed to be produced in custody before this Court on 10.09.2024 for hearing on the quantum of sentence.



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73. In view of the above, this Court finds merit in the present appeal and the same is partly allowed.

74. All the pending applications, if any, also stand disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

September 02, 2024
G Arora

Whether speaking/reasoned	: Yes / No
Whether reportable	: Yes / No