



CRA-S-2030-SB-2003 (O&M)

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

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CRA-S-2030-SB-2003 (O&M)**Reserved on :-01.08.2024****Pronounced on : 12.09.2024**

Amrik Singh and another

....Appellants

vs.

State of Haryana

....Respondent

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

Present: Mr. Ashit Malik, Advocate
for the appellants.

Mr. P.P.Chahar, Sr. DAG, Haryana.

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SUDEEPTI SHARMA, J.

1. The present appeal is filed by the appellants/accused-Amrik Singh and Mohinder Singh against the judgment dated 18.10.2003 in Session Case No. 3 of 04.01.2002, passed by learned Additional Sessions Judge, Jind, whereby they were convicted in FIR No. 161, dated 15.09.2001 registered under Sections 304-B and, 498-A of the Indian Penal Code, 1860 (for short, 'IPC') at Police Station Garhi and were sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1000/- each under Section 498-A of the Indian Penal Code, 1860. They were further sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.5000/- each under Section 304-B of the Indian Penal Code, 1860. In default of payment of fine, each of the convict shall further



undergo rigorous imprisonment for a period of six months. Both the sentences were ordered to run concurrently.

BRIEF FACTS OF THE CASE

2. As per the author of the FIR (Ex.P6)/complainant Karnail Singh, who is father of the deceased (Paramjit Kaur), in his statement stated that on 15.9.2001, Karnail Singh son of Labh Singh and Darshan Singh son of Bodh Singh, Jat Sikh, both residents of village Andhali, Police station Sadar Kaithal came to Police station Garhi and Karnail Singh complainant informed the Police at Police station Garhi that his daughter Paramjit Kaur alias Potli who is married with Mohinder Singh son of Amrik Singh, Jat Sikh, resident of Garhi had consumed the tablets of poison and they had come after seeing her in a private hospital at Khanauri and the parents of the girl had shifted her to Shah Hospital, Kaithal. On this information, Shish Pal Singh, Assistant Sub Inspector alongwith other Police officials went to Shah Hospital alongwith Karnail Singh and Darshan Singh. The doctor handed over him a medical ruqa and on the application, being moved by the Assistant Sub Inspector, the doctor declared the patient to be in a fit state of mind to make the statement. Then Shish Pal Singh, ASI moved an application in the court of learned Addl. Chief Judicial Magistrate, Kaithal on the basis of which Sh.N.P.Devat, the then learned Addl. Chief Judicial. Magistrate, Kaithal had recorded the statement of Paramjit Kaur after visiting Shah Hospital, Kaithal. Paramjit Kaur made her statement to the effect that she was married with Mohinder Singh about 2-1/2 year back and out of this wedlock one son (aged about one year) was born. Just after the marriage her husband, Mohninder Singh, Chanderpati, (mother-in-law), Amrik Singh (father-in-law) and Kala Singh (Devar/brother-in-law) had started harassing



her. Her husband and father-in-law gave her beatings after consuming liquor. They had demanded money. Now she has consumed two tablets of Celphos because of the harassment given by the accused persons. She has further stated that she had taken these tablets from Dhan Kaur wife of Tara Sarpanch. On this statement, formal FIR under section 498-A of Indian Penal Code 1860 was registered against the accused. Lateron, Paramjit Kaur had expired and the offence under Section 304-B Indian Penal Code 1860 was added.

3. During the investigation, the accused were arrested and after completion of investigation, they have been sent up to face trial under Section 498-A and 304-B of the Indian Penal Code 1869 by SHO, Police Station Garhi.

COMMITTAL PROCEEDING

4. On the basis of the statement, FIR No. 161, dated 15.09.2001 was registered under Section 304-B and 498-A of the Indian Penal Code, 1860. The challan under Section 304-B/498-A IPC was presented before the Judicial Magistrate, Ist Class, Narwana. Since the offence punishable under Section 304-B of Indian Penal Code 1860 is triable exclusively by the Court of Session, therefore, vide order dated 21.12.2001, the case was committed to the Court of Session for trial and the accused were directed to appear before the Court of learned Sessions Judge, Jind.

TRIAL PROCEEDINGS

5. To prove the case, the prosecution examined PW-1 Mahipal, PW-2 Jaibir Singh, PW-3 Karnail Singh, PW-4 Dr. Shiv Kumar, PW4/1 Balwinder Kaur, PW-5 Constable Satyawar Singh, PW-6 Jagdish Chander, PW-7 Dr. R.P. Goyal, PW-8 ASI Shish Pal Singh, PW-9 SI Anup Singh, PW-10 Sh. N.P. Devat,



learned Addl. District and Sessions Judge, Gurgaon. After that prosecution evidence was closed.

6. Statements of accused under Section 313 Code of Criminal Procedure were recorded in which they denied the allegations made by the prosecution and pleaded their false implication.

7. In defence, the accused examined DW-1 Jai Karan, DW-2 S.C.Garg, DW-3 Mukhtiar Singh and DW-4 Tara Singh and closed their evidence.

SUBMISSIONS OF THE COUNSELS FOR THE APPELLANTS

8. Learned counsel for the appellants i.e Amrik Singh and Mohinder Singh contends that the learned trial Court has wrongly convicted Amrik Singh and Mohinder Singh, for the offences punishable under Sections 304-B, 498-A of the Indian Penal Code, 1860.

9. He further contends that the dying declaration (Ex PE/PJ) made by Paramjit Kaur (since deceased) does not contain the certificate of the doctor regarding fitness of the patient

SUBMISSIONS OF THE STATE COUNSEL

10. Per contra, 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 20.02.1999 and the occurrence took place on 15.09.2001

(iii) That as per the Chemical Examiner report (Ex PF), the contents of Exhibit No. 1, 2, 3 and 4 gave positive test for Aluminium Phosphade



(iv) That there was demand of dowry, some days prior to the death of the deceased, as per the evidence of PW3 Karnail Singh.

(vii) 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.

11. Further contends that Paramjit Kaur (since deceased) died within seven years of marriage and under unnatural circumstances, therefore presumption under Section 113-B of the Indian Evidence Act, 1872 is against the accused persons and in order to rebut the presumption, the accused examined four defence witnesses but no evidence was led in their favour.

12. He further contends that there is no contradiction in the cross-examination of P.W.3 (father of the deceased). He further contends that the prosecution has fully proved its case against all the four accused in its entirety and as per the provisions of Section 498-A/304-B of the Indian Penal Code, 1860, the prosecution has fully proved on record that the death was within 7 years of marriage on account of harassment and demand of dowry.

13. He further contends that since the facts of the present case covers all the ingredients of Section 498-A and 304-B of IPC, therefore, the present appeal deserves to be dismissed and the judgment dated 18.10.2003 passed by learned Additional Sessions Judge, Jind qua conviction of accused Amrik Singh and Mohinder Singh deserves to be upheld.

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



15. The learned trial Court convicted Amrik Singh and Mohinder Singh, vide impugned judgment and the relevant portion of the judgment reads as under:-

“5. It was argued by learned defense counsel Sh. R.S. Nain that there was no immediate cause for Paramjit Kaur alias Poli to commit suicide. In this case, according to the prosecution Paramjit Kaur was married with accused Mohinder Singh and Amik Singh was the father-in-law of the deceased. In this case the dying declaration Ex PJ is very material piece of evidence to unfold the prosecution story. The dying declaration recorded by learned Addl. Chief Judl. Magistrate, Kaithal is Ex PE. No doubt it shows that after the marriage of Paramjit Kaur, her husband it shows that after the marriage of Paramjit Kaur, her husband Amrik Singh, father-in-law Mohinder Singh, mother-in-law Chander Pati and brother-in-law Kala alias Satgur Singh used to harass her and used to demand money. She has categorically stated that her husband and father-in-law gave beatings to her and she told this fact to her parents. Defence witnesses have categorically stated that Chander Pati was not present in the village when the deceased consumed poison. Moreover Paramjit Kaur deceased not stated in her statement about the presence of the accused when she consumed poison. She has also no where stated that accused Kala @ Satgur and Chanderpati used to give beatings to her. She has only stated that they stated harassing her after the marriage. She has no where stated about the specific demand of Rs.20,000/-. Admittedly as per Ex.PE/Ex.PJ the deceased



has categorically stated that she has taken this step as they used to harass her but she has not specifically named accused Satgur alias Kala and Chanderpati.

6. No doubt PW-3 Karnail Singh as well as PW4/1 Balwinder Kaur have stated about the demand of Rs.20000/- as well as Rs. One lac by the accused. With regard to the demand of Rs. One lac, Karnail Singh has stated that it was made by the accused from the deceased and the deceased informed her mother a day prior to her death while Balwinder Kaur (PW/4) has stated that the deceased informed her about three days prior to her death. If the demand was made three days prior to her death, then it can not be treated as immediate cause to take such step but if the demand was made a day earlier then it can be taken an immediate cause for deceased Paramjit Kaur to take such a step.

7. Sh.S.B.Lather, learned Public has argued before me that the another daughter of Karnail Singh was married with Satgur Singh alias Kala, so Karnail Singh cannot implicate the accused falsely to ruin the future of his another daughter. In that case I am of the view that Satgur accused was married with another daughter of Karnail Singh then he could have made demand from his wife and he cannot harass deceased Paramjit Kaur, his sister-in-law in that regard to bring dowry for him or for his brother, Amrik Singh. Satgur in his own right could have demanded dowry from his father-in-law rather than harassing Paramjit Kaur. No doubt it was argued by learned



Public Prosecutor that Chanderpati has also harassed the deceased just before she consumed poison, but the statements of DW-1 Jai Karan, DW-3 Mukhtiar Singh und DW-4 Tara Singh could not be brush aside simply because they have appeared as a defence witness. They are as good witnesses as Prosecution witnesses. DW-4 Tara Singh has categorically denied the demand of dowry made by the accused from Karnail Singh or his wife Balwinder Kaur through Paramjit Kaur deceased.

8. So far as the question of marriage is concerned it is not disputed that Paramjit Kaur was married with Amrik Singh accused on 20.2.99 and she has died on 15.9.2001 i.e almost two years and seven months of her marriage so as to show that she died during seven years of her marriage and then it can be safely held that it was for the accused to establish that there was no demand from their side. In view of the dying declaration as well as statements of PW-3 Karnail Singh and PW/1 Balwinder Kaur, it is clear that the deceased consumed poisons tablets resulting into her death. So far as the consumption of poison is concerned, it has been proved not only from the dying declaration Ex. PE/PJ but as well as from the report of Chemical Examiner EX.P7 that it contains Aluminium Phosphide in four sealed parcels containing sample of the Heart, contents from, stomach, small and large intestine, liver, kidney. Thus it is held that in view of Ex.P7 also, the parcels which were sealed by the Medical Officer, General Hospital, Kaithal after the examination



of dead body of Paramjit Kaur was giving the positive test of Aluminium Phosphide. The affidavits Ex.P1 and Ex.P2 clearly depicts that the samples were not tampered with. Moreover, PW-8 Shish Pal, ASI has categorically stated that he handed over the sealed parcels to the Moharrir Head Constable which he took from Dr.R.P.Goyal on 15.9.2001.

9. It was argued before me by the learned defence counsel Sh.R.S.Nain that according to the prosecution story the deceased took the poison in village Garhi and rather than shifting her to Jind or Rohtak she was taken to Kaithal and even after the arrival of the complainant she was not referred to any better hospital like P.G.I.M.S. Rohtak where she could have been given better treatment. This fact applies not only to the accused party but also to the prosecution witnesses. So it can be safely held that the proper medical aid was given to the deceased but she could not survive because she has consumed the poison which has caused her death.

10. So far as the financial position of Karnail Singh is concerned, even if he was a big land owner and he sold the land in the year 1986 for 1990, even then he was under debt of Rs.five lacs or forty lacs is not material. Because in this case the Paramjit Kaur was solemnised with Amrik Singh and the marriage of another daughter of Karnail Singh was also solemnised with Satgur @ Kala, the brother of Amrik Singh and it is not possible that the marriage was solemnised without any dowry. It is not to be consider about the



financial condition of Karmail Singh as it is to be seen only the dowry demand and harassment of the deceased at the hands of the accused. Learned Public Prosecutor Sh.S.B.Lather, has drawn my attention to a news item published in the Tribune of July 28, 2003 which clearly depicts that the dying declaration can be the well basis of conviction in view of the dictum laid down by the Hon'ble Apex Court. Similarly in the present case the statement recorded by the deceased is sufficient to prove that the deceased was given beatings by accused Amrik Singh and Mohinder Singh as she has not fulfilled their lust for dowry.

11. It was argued by Sh.R.S.Nain, learned defence counsel that there is delay in lodging the F.I.R. PW-3 Karnail Singh could have recorded his statement earlier but in this case the [F.LR](#) was registered on the basis of statement of the deceased recorded By PW-10 Sh.N.P.Dewat, then Addl.Chief Judl. Magistrate, Kaithal and thus the true version should have been depicted by the deceased in her statement i.e dying declaration and not by Karnail Singh. Karnail Singh on the basis of information received from his wife has recorded his statement. Thus there was no ambiguity in recording the statement.

12. With regard to the discrepancy in the date of degit, PW4/1 has stated that Karnail Singh went to the village on 27.8.2001 while in her statement recorded under section 161 Cr.P.C. she has stated



that PW-3 Karnail Singh has gone to the village of the accused on 18.9.2001.

13. So far as the injury on the cheek of the deceased is concerned, it has been mentioned in the post-mortem report Ex.P10 as well as stated by Dr.R.P.Goyal but it has been mentioned in Ex.PE/PJ that it was inflicted by the accused. Moreover it was only bruise on her face and that can be the result of the beatings given by accused Amrik Singh and Mohinder Singh. This it is clear that Paramjit Kaur has consumed the poison due to the dowry demand made by Amrik Singh and his father Mohinder Singh.”

ANALYSIS OF THE RECORD

16. PW-4 is the deposition of Dr.Shiv Kumar wherein he stated that he was working as a doctor with Shah Hospital, Kaithal. Paramjit Kaur (since deceased) wife of Mohinder Singh was admitted in the hospital at 8.30 AM and she was brought by some persons from the family of her husband. He stated that as per record, Karnail Singh had signed the papers. He stated that on her admission, information Ex.P5 was sent to the Police station Kaithal. He further stated that Paramjit Kaur (since deceased) was treated for Celphos poison and she died at 4:00 PM and the information was again sent to the Police.

17. In his cross examination, he stated that Paramjit Kaur (since deceased) was a young lady but her condition was very serious. He told about the treatment given to her and the amount deposited at the time of admission.

18. A perusal of the statement of Dr. Shiv Kumar shows that there is no discrepancy in his statement.



19. PW-5 is the deposition of Dr. M.S. Shah, who stated that he was the Incharge of Shah Hospital, Kaithal. On 15.9.2001 Smt.Paramjit Kaur (since deceased) was got admitted in his hospital at 11:30 AM, who had consumed poison (Celphos). She was got admitted by Karnail Singh in his hospital. He has sent ruqa Ex.P5, to S.H.O Police station City Kaithal regarding the admission of Smt.Paramjit Kaur (since deceased). On the same day Shish Pal Singh, ASI moved an application Ex.P8 for seeking his opinion if Smt.Paramjit Kaur (since deceased) was fit to make a statement. He has stated that after examining her, he found that she was in fit state of mind to make statement and he made his endorsement Ex.P9 to this effect. He has stated that Mr.N.P.Devat, Addl. Chief Judl. Magistrate, Kaithal came to his hospital and recorded the statement of Paramjit Kaur (since deceased) in his presence which is Ex.PA. She remained conscious throughout her statement recorded by the Magistrate.

20. In his cross examination as well, there is no major discrepancy.

21. Dr.R.P.Goyal while appearing as PW-7 in his deposition stated that he conducted the post-mortem examination on the dead body of Paramjit Kaur alias Poli wife of Mohinder Singh, 22 years female, resident of Garhi. He proved the post-mortem examination report Ex.P10 which he has conducted, alongwith Dr. Neelam Kakkar on Police application Ex.P8. As per his opinion, the cause of death was due to poisoning by Aluminium Phosphide. He also proved the report of Chemical Examiner Ex.P7.

22. There is no discrepancy in his cross examination.

23. DW-2 Dr.S.C.Garg in his deposition, stated that he runs a hospital by the name of Rotak Health Centre, at Khanauri. He stated that Paramjit Kaur (since



deceased) came to his hospital about two years back as it was a case of poisoning. He stated that he could not treat her, as her parents reached the hospital and took her to some other hospital. He has stated that the patient was taken away from his hospital by 3/4 persons.

24. This defence witness himself admitted the administration of poisonous substance by the deceased.

25. As per medical record, the test was found positive of Aluminium Phosphide in the body of Paramjit Kaur (since deceased).

CONCLUSION

26. Since the present appeal is filed against the judgment of conviction of the present appellants namely Amrik Singh and Mohinder Singh under Section 304-B and 498-A of the Indian Penal Code, 1860, it would be relevant to reproduce the relevant provisions of Indian Penal Code, 1860 and Section 113-B of the Indian Evidence Act, 1872 for proper adjudication of the present case.

SECTION 498-A OF INDIAN PENAL CODE 1860

“Section 498-A Husband or relative of husband of a woman subjecting her to cruelty. Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purposes of this section, "cruelty means"—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful



demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]

SECTION 304-B OF INDIAN PENAL CODE 1860

“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."*

SECTION 113-B OF INDIAN EVIDENCE ACT 1872

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 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 Indian Penal Code 1860, 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";

27. 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:-

"9. The first contentious part that exists in the interpretation of Section 304-B, IPC relates to the phrase " soon before & quot; 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. Mansukhbhai Kanjibhai 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 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:*

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 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 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- Bof the Indian Penal Code (45 of 1860”;



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. ..

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 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.”

28. The first ingredient of Section 304-B of the Indian Penal Code, 1860 is that the death of a women should be caused by the burn or bodily injury or otherwise than under normal circumstance.

29. In the present case, as per chemical examiner report (Ex PF), the contents of Exhibit No. 1, 2, 3 and 4 gave positive test for Aluminium Phosphade. As per statement of Dr. R.P. Goyal, who conducted the post mortem on the dead body of Paramjit Kaur, the cause of death was poisoning by aluminium phosphade.

30. A perusal of the record as well as the judgment passed by the learned trial Court, which is self speaking, wherein each and every record has been explained, shows that there is no infirmity in the judgment dated 18.10.2003 passed by the learned trial Court in convicted the accused namely Amrik Singh and Mohinder Singh. It has been observed by the trial Court that Paramjit Kaur (since deceased) was married with the accused Mohinder Singh. The dying declaration of Paramjit Kaur (Ex PE/PJ) is very material piece of evidence to unfold the prosecution story, which is recorded by Addl. Chief Judicial Magistrate, Kaithal. A perusal of dying declaration shows that after marriage of Paramjit Kaur (since deceased) with Mohinder Singh, her father-in-law i.e Amrik Singh, mother-in-law i.e Smt. Chander Pati and brother-in-law Kala alias Satgur Singh used to harass her and used to demand dowry. She has categorically stated in her dying declaration



that her husband i.e Mohinder Singh and father-in-law Amrik Singh give her beatings. She told this fact to her parents.

31. 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 conviction qua Mohinder Singh (husband of the deceased) and Amrik Singh (father-in-law), in respect of offences punishable under Section 304-B/498-A of the Indian Penal Code, 1860 are completely firm.

32. Therefore, this Court finds no merit in the present appeal. Consequently, the present appeal is dismissed. The impugned verdict of conviction qua ***Amrik Singh and Mohinder Singh***, as made on 18.10.2003 in Session Case No. 3 of 04.01.2002, passed by learned Additional Sessions Judge, Jind is upheld.

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

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

12.09.2024
G Arora