

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

**CRA-S No. 1184-SB of 2003
Date of Decision:- 29.10.2015**

Sona Devi and others

....Appellants

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

**Present: Mr. Tapan Yadav, Advocate,
for the appellants.**

**Mr. Tanuj Sharma, A.A.G., Haryana,
for the State.**

SHEKHER DHAWAN, J.

Appellants have challenged the judgment of conviction and order of sentence dated 08.04.2003, whereby all the appellants were held guilty for commission of offence under Sections 304-B and 498-A IPC and sentenced to undergo as under, vide order dated 08.04.2003: -

<i>Names of accused</i>	<i>Under Sections</i>	<i>Sentence</i>
Des Raj, Ranjit Singh, Dharampal and Sona Devi	304-B IPC	Sentenced to undergo Rigorous Imprisonment for a period of ten years.
	498-A IPC	Sentenced to undergo Rigorous Imprisonment for a period of two years and to pay a fine of ₹500/-/. In default of payment of fine, they shall further undergo Rigorous Imprisonment for a period of one month

2. Process of law was set into motion on the basis of complaint made by complainant Kanwar Singh to the police. As per complainant Kanwar Singh, he had two daughters, namely, Mamta and Sarita (since deceased). They were married to Dharampal and Des Raj sons of Ranjit Singh. Marriage of Sarita was solemnized 1½ years back. Mamta gave birth to a son, who was aged about 4 months, while Sarita was not having any child. Both the daughters were living separately. Sufficient dowry articles were given at the time of their marriage. However, both the daughters were being harassed by his sons-in-law and their parents for bringing inadequate dowry. Mamta told this fact when she visited her parental home. Kanwar Singh complainant, his brother Satbir and Bhim Singh, mediator at the time of marriage, visited matrimonial home of Mamta and Sarita and made humble request to Des Raj, Dharampal, Sona Devi and Ranjit Singh to keep and maintain Mamta and Sarita properly but to no effect. The harassmt and torture continued.

3. After sometime, Mamta again visited her parental home and told her father that the harassmt was still being given to them rather increased. The complainant sent his daughter back with a piece of advice. Sarita came back on the eve of Holi and narrated her tale of woes that her husband, *Jeth*, parents-in-law were harassing her a lot for bringing less

dowry. Kanwar Singh expressed his inability being a poor person. Sarita had gone back to her matrimonial home reluctantly. On 03.04.2002, a day prior to the reporting of matter to the police, Om Parkash brother of Ranjit Singh came to village Ghasera with two or three other persons. Om Parkash asked the complainant to come to Gumina and told that some quarrel had taken place. It was night time. Kanwar Singh told them to return and assured them that he would come in the morning. Complainant informed his relatives and then visited village Gumina along with relatives. There he found that her daughter Sarita was lying dead with burn injuries. He inquired from his daughter Mamta and came to know that Sarita had been killed by his sons-in-law, namely, Des Raj and Dharampal and parents-in-law of Sarita, namely, Ranjit Singh and Sona Devi for bringing less dowry.

4. On 03.04.2002, some unknown persons informed the police at about 8.00 PM that a daughter-in-law of Ranjit Singh had died on account of burn injuries. On this information, Bir Singh ASI reached village Gumina and found that Sarita was lying dead because of burn injuries. On this fact, the police started the investigation. Accused persons were arrested. Incriminating material i.e. plastic can having smell of Kerosene was recovered and was sealed on the spot with seal BS. After completion of investigation, challan was presented in the Court.

5. Charge for commission of offence under Sections 304-B and 498-A IPC read with Section 34 IPC framed against the accused. During trial, learned trial Judge recorded the statement of prosecution witnesses including statement of PW-1 complainant Kanwar Singh (father of deceased), PW-2 Mamta (sister of deceased), PW-3 Bhim Singh (mediator

of marriage), PW-4 Constable Rattan Lal, PW-5 Dr. Ashok Babhoria, PW-6, Constable Dharampal, PW-7 ASI Abhey Singh, PW-8 Constable Bhagwan Singh, PW-9 Rattan Lal (photographer) and PW-10 ASI Bir Singh (investigating officer). All the accused persons were examined under Section 313 Cr.P.C. Accused examined four witnesses in defence. Learned trial Judge after considering the prosecution version and defence version held the appellants-accused guilty for the commission of offence under Sections 304-B and 498-A IPC and convicted and sentenced them thereunder.

6. Learned counsel for the appellants mainly submitted that learned trial Judge completely ignored the fact that there was no material or deposition by way of statement of either of the witness on the point that such a demand of dowry was ever raised and Sarita was being harassed because of non-fulfillment of that demand. More so, no date, month or year has been given when the said demand was raised or what was the date of refusal. That way, the allegations against all the appellants-accused are just vague and general allegations, which does not mean anything. Learned counsel for the appellants also submitted that this has become a tendency in our society to falsely implicate the husband and accused persons in such like cases of death of a daughter-in-law in the matrimonial home by levelling just general and vague allegations of demand of dowry. As per view taken by Hon'ble Supreme Court, such vague and general allegations cannot be made basis for conviction of any person. On this point, reliance was placed upon judgment from Hon'ble Supreme Court in case **Amar Singh Vs. State of Rajasthan**, 2010(4) R.C.R. (Criminal) 53 that if a

prosecution witness who merely uses the word “harassed” or “tortured” and does not describe the exact conduct of the accused which, according to him, amounted to harassment or torture may not be believed by the Court in cases under Section 498-A and 304-B IPC. On the same point, reliance was also placed upon judgment from Hon'ble Division Bench of this Court in case Naresh Kumar and another Vs. State of Haryana, 2007(2) R.C.R. (Criminal) 660 and judgment from Co-ordinate Bench of this Court in case Salamudin and another Vs. State of Punjab, 2015(3) R.C.R. (Criminal) 250.

7. Learned counsel for the appellants also submitted that in the entire cross-examination of PW-1 Kanwar Singh-complainant, there are no specific dates regarding demand of dowry. Similar is the statement of PW-2 Mamta. PW-3 Bhim Singh who was a mediator at the time of marriage, has also admitted in his statement that it was a normal marriage. Learned counsel for the appellants also submitted that it had not come in the statement of PW-2 Mamta during her cross-examination that brother of Sarita was also staying with them during those days and the commission of such an offence was not possible in presence of brother of Sarita.

8. All these facts have been denied by accused persons in their statement under Section 313 Cr.P.C. They have taken a specific stand that even complainant was a poor person and he was not in a position to fulfill any such demand. In fact Sarita had committed suicide because of non-conceivment of child and because of meager income of her husband. More so, if Dharampal was to raise any demand, he was to raise the said demand of dowry from his wife Mamta and not from Sarita. There is nothing on file

that any panchayat was convened regarding harassment to Sarita and Mamta. No application was ever made to the police in this regard.

9. Learned counsel for the appellants also submitted that as appellants were facing trial for commission of offence under Sections 304-B and 498-A IPC, the most important ingredient in the case is missing. There is absolutely no evidence that any cruelty was caused to Sarita “soon before the death”. The prosecution version has not been proved as the defence version is more nearer to the truth. Learned trial Judge completely ignored these facts that Sarita and Mamta were maintaining separate residences. Learned counsel for the appellants also submitted that father-in-law, mother-in-law and *Jeth* were not beneficiary of demand of dowry, if any. So, they are certainly entitled of acquittal.

10. Learned State counsel urged that in the present case in fact both the daughters of complainant were being harassed by accused persons for demand of dowry. Otherwise there was no reason for Mamta to depose falsely against her husband and in-laws family while putting her matrimonial/family life at stake. The defence plea is not probable because there was no treatment of any ailment of Sarita. The death of Sarita had taken place in the matrimonial home. It was a case of unnatural death because of burning. The death had taken place just 1½ years i.e. within seven years of marriage. Sarita was being harassed and tortured for demand of dowry by the accused persons continuously and the same continued till her death. She came back to her parental home just 3-4 days prior to her death and still she was being harassed. She had earlier narrated her tale of woes to her sister Mamta as well as to her father and mother. The matter

was taken up with present appellants but there was no improvement in the behaviour of accused persons. All the accused committed offences under Sections 304-B and 498-A IPC and same have been duly proved on the file. Learned trial Judge has rightly held the appellants-accused guilty and convicted and sentenced them thereunder and the present appeal is without any merit.

11. Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that all the appellants were facing trial for the commission of offence under Sections 304-B and 498-A IPC. Most of the facts are not disputed that Sarita (since deceased) was married to Des Raj and death had taken place just after 1½ years i.e. within seven years of marriage. The death had taken place at the house of the present appellants. The death had taken place because of burn injuries. The basic ingredients of Section 304-B IPC are as under: -

- “i) the death of a woman should be caused by burns or bodily injury of otherwise than under normal circumstances:*
- ii) such death should have occurred within 7 years of her marriage:*
- iii) she must have been subjected to cruelty or harassment by her husband or any relatives of her husband soon before her death:*
- iv) such cruelty or harassment should be for or in connection with demand of dowry.”*

12. On the basis of statement of PW-1 Kanwar Singh complainant as well PW-2 Mamta (sister of deceased), the death of Sarita had taken place because of burn injuries and it was not a natural death. The said death had taken place within seven years of marriage. She was subjected to cruelty and harassment by her husband, *Jeth*, father-in-law and mother-in-law soon before her death. The said cruelty and harassment was for and in

connection with demand of dowry. The prosecution case is also based upon dying declaration made by the deceased to her sister as she had narrated her tale of woes while she was having burn injuries and death was about to take place.

13. As regards to defence plea taken by present accused that Sarita was suffering from ailment and she was under depression. The statement of witnesses in defence are just after thought and incorrect version. If Sarita was actually suffering for any ailment, then there must be some treatment and record thereof, which could be produced in the defence but that has not been done.

14. There are specific allegations for demand of dowry and PW-1 Kanwar Singh and PW-2 Mamta deposed before the trial Court regarding demand of scooter and ₹20,000/- in cash. This fact had come in the cross-examination of PW-1 Kanwar Singh and PW-2 Mamta. Learned trial Judge has minutely appreciated the statement of these two witnesses and rightly came to the conclusion that Kanwar Singh was a poor person and was unable to meet the said demand.

15. However, the plea taken by learned counsel for the appellants that Ranjit Singh, Sona Devi and Dharampal were not beneficiary of alleged demand of scooter and ₹20,000/- in cash is convincing and sounds to the reasoning. The said demand was raised by appellant Des Raj (husband) alone and in fact he is the beneficiary of said demand. His case is distinguishable on that point from the case of appellants Ranjit Singh, Sona Devi and Dharampal.

16. Similar matter was before Hon'ble Apex Court in Amar

demand of dowry by itself is not an offence under Section 498-A or Section 304-B IPC but punishable under Section 498-A or Section 304-B IPC is the act of cruelty or harassment by the husband or the relative of the husband on the woman. As per provisions of Section 113-B of the Indian Evidence Act, it is shown that soon before her death a woman has been subjected by any 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 within the meaning of Section 304-B IPC.

17. In case **Kans Raj Vs. State of Punjab and others, 2000(2) R.C.R. (Criminal) 695**, the Supreme Court observed that in cases where accusations of dowry deaths are made, the overt acts attributed to persons other than the husband are required to be proved beyond reasonable doubt and by mere conjectures and implications such relations cannot be held guilty for the offence relating to dowry deaths. In the aforesaid case, Hon'ble Supreme Court further observed that a tendency has developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits.

18. Identical matter was before Hon'ble Division Bench of this Court in case **Naresh Kumar and another Vs. State of Haryana, 2007(2) R.C.R. (Criminal) 660**, wherein, husband and mother-in-law of deceased were held guilty and convicted and sentenced under Section 304-B IPC for identical demand for scooter and ₹60,000/- in cash. Hon'ble Division Bench upheld the conviction mainly on the ground that husband is beneficiary from dowry articles. Hon'ble Division Bench also observed that

case of mother-in-law so far as demand, cruelty and harassment is concerned, is distinguishable from appellant husband. She is mother-in-law of the deceased. Testimony of witnesses in the said case were relating to harassment and mal-treatment by her but there was no specific instances attributed against her. She had nothing to do with the demand of scooter, which is primarily for the use of accused husband.

19. In Salamat Ali and others Vs. State of Bihar, 1997 SCC (Criminal) 842, Hon'ble Supreme Court observed that demand of scooter predominantly must have been raised by the husband. It cannot be expected that the father-in-law would be demanding a scooter for himself or that the mother-in-law needed it for her use and acquitted the father-in-law and mother-in-law and convicted the husband.

20. In view of above law laid down by Hon'ble Supreme Court in Salamat Ali's case (supra) and judgment from Hon'ble Division Bench of this Court in Naresh Kumar's case (supra), this Court is of the considered opinion that case of appellant Des Raj (husband) is certainly distinguishable from the case of appellants Sona Devi (mother-in-law), Dharampal (*Jeth*) and Ranjit Singh (father-in-law) of the deceased. They are not the beneficiary of alleged demand of scooter and cash of ₹20,000/- and they are certainly entitled for acquittal. However, as regards to appeal filed by appellant Des Raj, who is husband of the deceased, there are specific allegations of alleged offence under Sections 304-B and 498-A IPC against him and learned trial Judge has rightly held him guilty and convicted and sentenced for commission of offence under Sections 304-B IPC and 498-A IPC. Learned trial Judge has already taken reasonable view

on the point of sentence keeping in view of the gravity of offence.

21. Resultantly, the appeal filed by appellants Sona Devi (mother-in-law), Dharampal (*Jeth*) and Ranjit Singh (father-in-law) is accepted and judgment of conviction and order of sentence qua them set aside. However, appeal filed by appellant Des Raj (husband) against judgment of conviction and order of sentence is without any merit and same stands dismissed.

October 29, 2015
naresh.k

(**SHEKHER DHAWAN**)
JUDGE