

In the High Court for the States of Punjab and Haryana at
Chandigarh

...

CRA-S- 430-SB of 1999

Date of decision: 11.3.2015

Teja Singh and others

.Appellants

Versus

State of Haryana

..Respondent

Coram: **Hon'ble Mr. Justice Mahavir S. Chauhan**

Present: Mr. H.S.Jalal, Advocate
for Mr. Sandeep Punchhi, Advocate
for the appellants
Mr. Praveen Bhadu, AAG,Haryana
for the respondent-State

Mahavir S.Chauhan, J.(Oral)

Learned State counsel has placed on record a report from the office in-charge of Police Station Kalanwali to the effect that appellant Jodha Singh has died on 10.2.2005. The report is supported by an attested copy of Death Certificate of said appellant Jodha Singh.

In view of this, appeal qua appellant Jodha Singh abates.

Judgment of conviction dated 12.4.1999 and order of sentence dated 15.4.1999 passed by learned Sessions Judge, Sirsa (hereinafter referred to as the "trial Court") convicting and sentencing appellants Teja Singh, Jodha Singh and Jaswant Kaur to rigorous imprisonment for a term of 7 years under section 304-B of Indian Penal Code (for short,"IPC") are under challenge in this appeal brought by them. Incidentally, appellant Jodha Singh has died and

the appeal qua said Jodha Singh, as stated at the very outset, therefore, abates. The appeal now survives qua Teja Singh and Jaswant Kaur only.

The accused were put on trial under Section 304-B, IPC, on account of death of Golo within seven years of her marriage otherwise than under natural circumstances on the allegations that soon before her death, she was subjected to cruelty for and in connection with demand of dowry.

As per case put up by the prosecution in a written complaint dated 27.9.1994 (Exhibit PC) the deceased was married to appellant Teja Singh alias Gurtej Singh about 6/7 years before the occurrence. She was not blessed with a child. For that reason she was harassed by the accused. Though at the time of marriage, she was given some house hold articles and clothes etc. to meet out demand of the accused and was kept nicely by them but after some time, the accused had started harassing her. Whenever complainant Jagga Singh father of the deceased visited the deceased, he was informed by her of such harassment by the accused on account of her inability to bear a child. A panchayat was convened and a sum of Rs. 10,000/- was demanded by the accused for treatment of Golo. However, no treatment was provided to her even though the complainant assured to give another amount of Rs. 10,000/-. On 24.9.1994, complainant Jagga Singh came to see the deceased and was told of her ill-treatment at the hands of the accused. On 27.9.1994, at about 8 a.m., one person of their village Odhan told the

complainant that deceased had received burn injuries. Upon this, complainant Jagga Singh accompanied by Bharpoor Singh Sarpanch and other respectables of his village went to Odhan and came to know that the accused had burnt the deceased and were making excuse that she had caught fire from the stove only to save themselves. On the basis of complaint, Exhibit PC, a formal first information report (for short,"FIR"), Exhibit PC/2, was recorded at about 3.30 P.M. on 28.9.1994. In the meantime, Golo, who was taken to Civil Hospital, Sirsa on 26.9.1994, died on 28.9.1994 and before that she is shown to have made a dying declaration, Exhibit PG/2, before Naib Tehsildar-cum-Executive Magistrate, Daya Nand Malik (PW10) at about 11.30 A.M. on 26.9.1994.

The matter was investigated into. Statements of witnesses were recorded. A report in terms of Section 173(2) of Code of Criminal Procedure (for short,"Cr.P.C.") was filed before the learned Area Magistrate who committed the case to the learned Sessions Judge, Sirsa. On hearing the prosecutor and the defence, a prima facie case triable under section 304-B, IPC, having been found to be made out against the accused, learned trial Court charged them accordingly.

In order to bring home guilt of the accused, prosecution examined Dr. J.K.Bishnoi (PW1), ASI Jai Hind (PW2), Inderjit Draftsman (PW3), Inspector Vijay Singh (PW4), Dr. Mohar Singh, (PW5), Constable Bhup Singh (PW6), Complainant Jagga Singh (PW7), Sachiar Kaur (PW8), Bharpur Singh(PW9), Daya Nand Malik,

Naib Tehsildar-cum-Executive Magistrate(PW10), Dr. S.L. Aggarwal (PW11) and Investigating Officer ASI Hardev Singh (PW12).

All the incriminating circumstances appearing in the evidence of the prosecution were put to the accused in their examination under Section 313, Cr.P.C., which they denied and while reiterating plea of false implication, it was stated that the deceased had caught fire while preparing tea on a kerosene stove.

The accused did not lead any evidence in defence.

Learned trial Court on appreciation of evidence and submissions made at the bar concluded that the prosecution was able to bring home guilt of accused Teja Singh, Jodha Singh and Jaswant Kaur beyond reasonable doubt and accordingly convicted and sentenced them as herein before stated.

I have heard learned counsel for the parties.

It is argued by learned counsel for the appellants that prosecution has failed to prove existence of ingredients of Section 304-B, IPC, i.e., treatment of the deceased with cruelty for and in connection with demand of dowry soon before her death and above this all, the deceased, in her dying declaration, Exhibit PG/2, has very specifically stated that none of the accused was responsible for burns received by her and that she had caught fire while preparing tea on a kerosene stove. According to the learned counsel for the appellants, learned trial Court has refused to rely upon dying declaration, Exhibit PG/2, on non existing ground of its having not been recorded by Daya Nand Malik Executive Magistrate (PW10) in

his own handwriting and in the words spoken by the deceased.

Per contra, on behalf of respondent-State it has been emphatically argued that death of the deceased by burns, indisputably, is otherwise than in normal circumstances and it has remained undisputed that death of the deceased came within seven years of her marriage and soon before her death she was subjected to cruelty by the accused for and in connection with demand of dowry. According to learned State counsel, judgment of conviction and order of sentence recorded by the learned trial Court do not call for any interference.

Nothing more has been urged on either side.

Section 304-B, IPC, defines dowry death. It reads as under:-

(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.”

On perusal of the aforesaid provision, it comes out that to convict a person under Section 304-B, IPC, prosecution is required to prove that the deceased died otherwise than in normal circumstances within seven years of her marriage and soon before her death she was subjected to cruelty by her husband and /or relatives of her husband for and in connection with demand of dowry. Exhibit PC is the complaint made by complainant Jagga Singh to the police which provided basis for recording of FIR, Exhibit PC/2. A perusal of this complaint would reveal that the deceased was statedly harassed by the accused not in connection with demand of dowry but because she was unable to give birth to a child. In fact, throughout the body of the complaint, Exhibit PC, there is not even a whisper to suggest that the deceased was subjected to cruelty by the accused for and in connection with demand of dowry. Jagga Singh appeared as PW7 before the learned trial Court and while reiterating what was stated by him in his complaint, Exhibit PC maintained a calculated silence as regards demand of dowry by the accused and harassment of the deceased by them for and in connection with demand of dowry. Sachiar Kaur mother of the deceased appeared as PW8. She also did not state a word to suggest that any demand of dowry was

raised by the accused at any stage of the married life of the deceased with appellant Teja Singh. PW9 Bharpur Singh Sarpanch of village of the complainant has attempted to come to the rescue of the prosecution by introducing for the first time demand of dowry by the accused and harassment of the deceased at their hand for and in connection with such a demand. His such statement cannot be taken cognizance of for the reason that PW7, Jagga Singh, complainant the father of the deceased, and PW8 Sachiar Kaur, mother of the deceased, has not stated a word to suggest demand of dowry by the accused and besides this, in his statement Exhibit DB recorded by the police under Section 161 Cr.P.C., even Bharpur Singh PW9 did not make such a statement.

Further, no body from the locality of the deceased has come forward to depose that the deceased was subjected to cruelty by the accused for and in connection with demand of dowry or that the accused had contributed to burning of the deceased in any manner. The person, who as per case of the prosecution had informed the complainant and his wife about the deceased having received burns, has neither been identified nor examined as a witness. Meet Singh and Amar Singh, who as per case of the prosecution accompanied complainant Jagga Singh to village Odhan on receipt of information about the deceased having received burns have not been examined as witnesses.

The deceased in her statement, Exhibit PG/2, has very specifically stated that she received burns when she was preparing

tea on kerosene stove. Learned Sessions Judge has disbelieved this statement only on the ground that the exact words stated by the deceased have not been recorded and the statement, Exhibit PG/2, is not in the handwriting of the Executive Magistrate. However, in the evidence of PW7 Jagga Singh it has come on record that when he visited house of the deceased, he found that there was a hearth in the court-yard and a stove was lying nearby. Though stove was not in damaged condition and was clean but un-burnt pieces of clothes were lying scattered along with it. Further, when Naib Tehsildar-cum-Executive Magistrate, Daya Nand Malik, appeared as PW10 and proved on record dying declaration, Exhibit PG/2, no questions were put to him to suggest that there was a pressure on the deceased to make a statement in such a manner or that it was not recorded by him or in his presence as stated by the deceased. It may still be added that dying declaration, Exhibit PG/2, of the deceased was recorded at 11.30 A.M. on 26.9.1994 immediately before Dr. S.L. Aggarwal (PW11) had declared the deceased fit to make a statement vide endorsement, Exhibit PH, recorded at 11 A.M. on 26.9.1994 and it has come in the evidence of Naib Tehsildar-cum-Executive Magistrate (PW10) that the deceased remained conscious throughout the making of the statement. Though an opportunity was available to the prosecution to re-examine Naib Tehsildar-cum-Executive Magistrate (PW10) so as to seek explanation from him with regard to fitness of the deceased and the reasons that prevented him from recording the statement of deceased in his own

hand but the prosecution for reasons best known to it felt it wasteful and unnecessary to avail of this opportunity. Silence of the prosecution in this regard implies that it was satisfied about the correctness of the statement made by the witness to the aforesaid effect. That being so, the contention that the statement of the deceased was not recorded correctly by Naib Tehsildar-cum-Executive Magistrate (PW10) Daya Nand Malik is not available to the prosecution now.

In the evidence of PW1 Dr. J.K. Bishnoi and PW5 Dr. Mohar Singh, it has come on record that the deceased was taken to the hospital with 100-95% burns and she died because of the extensive burns, i.e., otherwise than in natural circumstances but from the evidence as discussed herein above, it is evident that other ingredients of Section 304-B, IPC, i.e., treatment of the deceased with cruelty for and in connection with demand of dowry etc. have remained unfulfilled and that being so, conviction and sentence of the appellants under Section 304-B, IPC, cannot be sustained.

Resultantly, the appeal succeeds and is accepted. Judgment of conviction and order of sentence passed by the learned Sessions Judge, Sirsa are set aside. The appellants are acquitted of the offence of which they have been charged and convicted.

The appellants are on bail. Their bail bonds are discharged.

March 11, 2015
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(MAHAVIR S. CHAUHAN)
JUDGE