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

Date of Decision: 21.08.2015

1. CRA-S No.195-SB of 2004

SurenderAppellant

Vs

State of Haryana ...Respondent

2. CRA-S No.215-SB of 2004

RajoAppellant

Vs

State of HaryanaRespondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. B.S. Rana, Senior Advocate with
Ms. Anu Singh, Advocate
for the appellant(s).

Mr. Arun Luthra, A.A.G., Haryana.

- 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?***

RAJ MOHAN SINGH, J.

[1]. By this common judgment CRA-S No.195-SB of 2004 and CRA-S-215-SB of 2004 are being decided as both of these appeals have arisen out of judgment of conviction dated 07.01.2004 and order of sentence dated 09.01.2004 passed by Additional Sessions Judge, Sonapat. For facility of reference, facts are being taken from CRA-S No.195-SB of 2004.

[2]. Vide the impugned judgment of conviction and order of sentence, appellants were found guilty and were convicted and

sentenced for rigorous imprisonment of 7 years under Section 304-B IPC and rigorous imprisonment for 2 years and to pay fine of Rs.500/- each under Section 498-A IPC. In default of payment of fine, they were ordered to undergo further rigorous imprisonment for 3 months. Both the sentences were ordered to run concurrently.

[3]. FIR No.302 dated 20.11.1998 under Sections 498-A and 304-B IPC, Police Station Kharkhoda was registered on the statement of Chhattar Singh (PW-1) on 20.11.1998. Chhattar Singh got FIR registered on the allegations that he is an agriculturist. He has one son and three daughters. Rajesh is the eldest, younger to him is daughter Bala Devi, Neelam is younger to Bala and Premil is the youngest. He got his daughter Bala Devi married with appellant Surender on 06.05.1996 in village Khanda according to Hindu rites and ceremonies. He gave sufficient dowry in cash and kind in the marriage according to his status.

[4]. After the marriage, his daughter started visiting them. After sometime the in-laws of her daughter started harassing her for want of dowry. She was tortured physically as well as mentally for bringing insufficient dowry. Whenever his daughter used to come to his house, she used to tell them about the same. They used to send the daughter to in-laws' house after making her understand. He gave sum of Rs.20,000/- for scooter in the marriage but her in-laws did not purchase the same and used to raise repeated demand for a refrigerator.

[5]. Complainant further stated that about 10 days prior to the occurrence, his daughter Bala Devi came to his house and told that her in-laws i.e. her mother-in-law, father-in-law, Jeth, Jethani and husband used to harass her for not bringing refrigerator in the dowry. At that time complainant's wife Krishna, his brother Bhim Singh and his son Rajesh were present. On 19.11.1998, husband of his daughter came to take her back and the complainant sent his daughter with Surender after making them understand. On the same day i.e. intervening night of 19/20.11.1998, Kartar Singh father-in-law of his daughter came to his house and told that his daughter has died. The complainant along with his wife and other family members went to the house of the accused where his daughter was found dead. Complainant alleged that either the father-in-law, mother-in-law, Jeth, Jethani and husband have harassed and killed his daughter on account of not bringing a refrigerator in the dowry or his daughter has died because of harassment/torture. With this prosecution story FIR (Ex.PA) came to be registered.

[6]. The case was investigated and after necessary compliance of procedure, challan was submitted against Kartar Singh, Surender S/o Kartar Singh and Smt. Rajo W/o Kartar Singh for the offences under Sections 498-A and 304-B IPC. Accordingly, they were chargesheeted for the offences punishable under Sections 498-A and 304-B IPC. The accused pleaded not guilty and claimed trial.

[7]. The prosecution examined complainant, Chhattar singh as

PW-1, Rajesh S/o Chhattar Singh as PW-2, Smt. Krishna W/o Chhattar Singh as PW-3, Constable Inder Pal as PW-4, MHC Ramesh Chander as PW-5, Virender Singh as PW-6, S.I. Amar Dass as PW-7, Jagmender Singh as PW-8, Ranbir Singh retired Inspector of Police as PW-9 and Dr. Purnima Ahuja as PW-10, besides tendering documents Exs.PA to PJ/2. Thereafter statements of all the accused persons were recorded under Section 313 Cr.P.C. They pleaded themselves to be innocent and alleged false implication. The accused tendered affidavit of mother and brother of the deceased in their defence as Exs.D-1 and D-2.

[8]. Chhattar Singh PW-1 in his statement before the Court stated that deceased Bala Devi was his daughter and got married to accused Surender on 06.05.1996, but no issue took birth from this wedlock. Accused Kartar Singh, his wife Rajo are parents-in-law of his daughter. At the time of marriage, he spent money towards dowry beyond his capacity. After the marriage his daughter joined company of her husband in matrimonial house. The complainant paid Rs.20,000/- in cash at the time of marriage for purchasing a scooter, but the husband did not purchase the same. Accused started harassing his daughter and demanded refrigerator from the complainant. His daughter used to narrate about the harassment whenever she came to the parental house. Complainant requested Kartar Singh and advised him to have control over the members of his family and also advised his daughter to be cool and to adjust in the atmosphere. About 10 days prior to the death, Bala Devi visited

the house of the complainant and at that time she narrated about the miseries done to her by her in-laws, husband and other family members of his family. At that time wife of the complainant-Krishna, his son Rajesh and his brother Bhim Singh were also present. On 19.11.1998, his son-in-law Surender came to parental house to take Bala Devi back to matrimonial house. The complainant gave them the counseling and asked them to live peacefully and with harmony. The daughter accompanied her husband Surender to the matrimonial house. On the same day i.e. intervening night of 19/20.11.1998 Kartar Singh came to him and told about the death of Bala Devi. Complainant along with his wife, son and other inhabitants of the village went to matrimonial house of Bala Devi and found her lying dead on a cot. He also alleged that his daughter Bala Devi wrote a letter to him on 15.06.1998 regarding harassment to her. He produced copy of letter Ex.P-1 and envelope Ex.P1/A on the record in his statement. He further stated that on seeing the dead body of his daughter he was convinced that foul play has been done and his daughter has died in mysterious circumstances. Accordingly, FIR (Ex.PA) was got registered by the complainant.

[9]. Rejesh PW-2 brother of the deceased and Krishna PW-3 mother of the deceased have not supported the prosecution case, rather they stated that that deceased led a normal life with her husband and she never told them about the harassment meted to her for want of any dowry. At the request of learned Public Prosecutor both of them were declared hostile and were cross-

examined. These witnesses were also confronted with their previous statements Exs. PC and PD. Both the witnesses have stated that the Bala was never harassed by the accused for want of dowry. Neither they paid Rs.20,000 for purchasing a scooter, nor the accused raised any demand of any refrigerator. In their cross-examination, they stated that PW-1 Chhattar Singh told them that he had given the statement in the Court under the pressure of Police. Chhattar Singh died on 05.07.2001. Constable Inder Pal while appearing as PW-4 deposed on 11.01.1999 that he went to the spot and prepared scaled site plan Ex.PE at the instance of PW-1 Chhattar Singh, which bears his signature.

[10]. Virender Singh-PW-6 identified the dead body of Bala Devi when its post mortem examination was being conducted by Doctors. SI Amar Dass-PW-7 proved the report under Section 173 Cr.P.C. HC Jagmender Singh while appearing as PW-8 deposed that on 20.11.1998, he was posted as MHC, at P.S. Kharkhoda then SI Ranbir Singh handed over to him the case property for depositing the same in Malkhana and on 08.01.1999, he sent the case property to FSL Madhuban, through Constable Ramesh for its chemical examination. After deposit of the case property with FSL Madhuban, Ramesh handed over the receipt to him. Ramesh has also filed his affidavit Ex.PF deposing that case property remained intact when he deposited the same in the FSL Madhuban. Inspector Ranbir Singh (retired) PW-9 stated in his statement that after registration of FIR (Ex.PA) he made his endorsement Ex.PA/1 and thereafter went

to spot and prepared rough site plan Ex.PG. He recorded the statements of witnesses under Section 161 Cr.P.C. He sent the dead body of deceased for post mortem examination in the hospital. He stated that during the course of investigation, the complainant Chhattar singh handed over letter Ex.P-1 along with envelope Ex.P1/A to him on 22.11.1998 and marriage card Ex.P-2 which were taken in possession through recovery memo Ex.PB. The complainant also put the signature on the recovery memo Ex.PB.

[11]. Similarly Dr. Punima Ahuja while appearing as PW-10 deposed that on 20.11.1998 she along with Dr. Adarsh Singh conducted post mortem examination on the dead body of Bala Devi who was brought by Constable Kuldeep Singh and Sumer Singh. There was no injury mark on the dead body. After the post mortem examination, parts of organs were sent for chemical examination. After seeing the report of Chemical Examiner Ex.PJ, she opined that cause of death was due to consumption of poison i.e. Aluminum Phosphide. Post mortem examination report Ex.PJ/1 has been proved by the Doctor, endorsing that examination was done between 24 hours. Post mortem examination was conducted on the request of Police/Ex.PJ/2.

[12]. The trial Court proceeded to convict and sentence the accused/appellants on the premise that death took place within seven years of marriage. Ex.P1-writing of the deceased sent to her father (complainant) has been treated to be incriminating material,

thereby drawing presumption to the same. Trial Court on the ground that deceased has died within seven years of her marriage otherwise than under normal circumstances, therefore, under such circumstances, Court has the only option to presume that the accused have caused dowry death until the accused disprove the same. The solitary statement of the complainant has been treated sufficient for drawing presumption of dowry death against the accused/appellants. Ultimately trial Court passed the impugned judgment of conviction and order of sentence.

[13]. I have heard the arguments of both the sides and have perused the record carefully.

[14]. Accused have been chargesheeted for the offences under Sections 498-A and 304-B IPC. Initial onus under Section 498-A lies upon the prosecution to prove that the deceased was harassed and subjected to cruelty at the hands of accused in the matrimonial house. Whereas in order to prove the offence punishable under Section 304-B IPC, firstly the prosecution has to establish the following ingredients:-

- (i) Whether death of Bala Devi was caused by injuries or otherwise than under normal circumstances?
- (ii) The death has occurred within seven years of her marriage.
- (iii) She must have been subjected to harassment or cruelty by the husband or his relatives soon before her death.

- (iv) Said cruelty or harassment must be for or in connection with demand of dowry.

[15]. Learned Senior counsel for the accused/appellants contended that the prosecution story has to be tested on the aforesaid ingredients. Learned Senior counsel by quoting the aforesaid ingredients submitted that as per post mortem report, no bodily injuries were found on the person of deceased. In view of statements of mother and brother of the deceased, she was not subjected to any cruelty or harassment by the accused or his relatives for or in connection with the demand of dowry. Therefore, appellants are entitled to acquittal. Reliance has been placed on **2001(4) RCR (Crl.) 401 SC, Sunil Bajaj v. State of M.P.** Learned counsel also cited **1997(3) RCR (Crl.) 85, (SC) Sham Lal v. State of Haryana** to the same effect and submitted that if the aforesaid ingredients of the offence under Section 304-B IPC and Section 113-B of Indian Evidence Act are not proved, then the accused deserves to be acquitted.

[16]. Learned Senior counsel further stated that the trial Court has illegally relied upon Ex.P1, the alleged writing of the deceased which was handed over to Investigating Officer only on 22.11.1998. The alleged writing is dated 15.06.1998. The complainant while appearing as PW-1 only said about this writing that he had shown letter Ex.P1 to the Police and they had obtained a photocopy from him which is available in the Court file. He also gave to the Police wedding card Ex.P2 which was received vide recovery memo Ex.PB

which bears his signature. The examination-in-chief of complainant PW-1 did not state as to the date on which the alleged writing was received by him through post, nor any explanation has come as to why reference to the writing was not made in the FIR, when the same was registered on 20.11.1998. Perusal of Ex.P1 itself shows that alleged writing was executed on 15.06.1998. The writing has not been compared by any hand writing expert. The envelope Ex.P1/A carries one seal dated 16.06.1998. The second seal is blurred and nothing can be discerned from the same. Simply the writing has been got exhibited on record without proving its execution.

[17]. Learned counsel by referring to **AIR 1971 SC 1865 Sait Tarajee Khimchand & Ors. vs. Satyam alias Satteyya & Ors.**

submitted that mere exhibition of documents does not dispense with proof of its execution. Therefore, no reliance can be placed on Ex.P-1 in the absence of proof of its execution. No effort has been made by the prosecution either to prove matching configuration of handwriting of the deceased with that writing appearing in Ex.P-1, nor any evidence from Postal Authorities has been collected by the prosecution. The Investigating Officer while appearing as PW-9 has specifically stated in examination-in-chief that he took possession of letter Ex.P-1 along with envelope Ex.P-1/A and marriage card vide recovery memo Ex.PB. Nothing has been said by the Investigating Officer in the context of any verification of Ex.P-1 from Postal Authorities, rather in cross-examination, the witness has admitted that handwriting of Bala Devi was not sent for comparison to FSL

Madhuban.

[18]. Dr. Purnima Ahuja has also given the statement to the fact that there was no injury mark on the dead body and the cause of death was due to consumption of poison i.e. Aluminum Phosphide. The statements of PW-2 and PW-3 are categoric in nature that there was no harassment by the accused before the death of deceased, nor any demand was ever raised by the accused. The witnesses are none else the mother and brother of the deceased. With these statements on record, according to learned Senior counsel for the appellant(s), conviction should not have been recorded by the trial Court as the statement of PW-1 remained uncorroborated by PW-2 and PW-3 whose presence was admitted by complainant when the deceased allegedly visited the parental house and deposed in the context of alleged demand made by the accused.

[19]. Learned counsel for the appellant(s) placed reliance upon **2003 SCC (Cri.) 1239, State of Haryana vs. Inder Singh and others** to contend that conviction cannot be recorded solely on the basis of statement of father of the deceased as the same stood contradicted with the statements of mother and brother of the deceased. Moreover mother and brother of the deceased have specifically deposed in their statements that statement of complainant was recorded under pressure of the Police as disclosed by the complainant before his death on 05.07.2001.

[20]. Learned counsel for the appellant further relied upon

2010(4) RCR (Crl.) 53, State of Rajasthan v. Jagdish and another

to submit that word 'harassed' and 'tortured' in the FIR have their own connotation inasmuch that the exact conduct of the accused has to be demonstrated on record and in the absence thereof, the alleged harassment or torture cannot be believed by the Court in cases under Sections 498-A and 304-B IPC. Act of subjecting a woman to cruelty or harassment for or in connection with, any demand of dowry, by the accused must be established by the prosecution for the Court to presume that the accused has caused dowry death. The exact act of the accused has to be elaborated with reference to material particulars. The alleged demand of refrigerator in itself cannot be presumed to be incriminating as it is not an offence under Section 498-A or under Section 304-B IPC. What is punishable under Section 498-A or Section 304-B IPC is the act of cruelty or harassment by the husband or the relatives of the husband on a woman. According to Section 113-B of Indian Evidence Act, the Court shall presume when it is shown soon before her death a woman has been subjected to cruelty or harassment for, or in connection with, any demand of dowry then Court shall presume that such person had caused the dowry death within meaning of Section 304-B IPC. In view of such situation, it is only the act of subjecting a woman to cruelty or harassment for, or in connection with any demand of dowry which is punishable and that must be established with reference to details of such harassment and cruelty.

[21]. Even as per material on record i.e. Ex.P-1 the alleged

demand is of cash worth Rs.30,000/-, whereas in the FIR the alleged demand is that of refrigerator. Learned Senior counsel for the appellant(s) stated that the prosecution case is not consistent vis-a-vis nature of demand allegedly made by the accused. On that score also Ex.P-1 cannot be relied by the prosecution to prove the demand arising out of FIR in question. Learned Senior counsel further stated that death of deceased at the residence without taking her to Hospital cannot be presumed to be at the hands of the accused. Apparently father-in-law of the deceased went to house of the complainant to inform about the death took place in the house itself on that very night. Mother and brother of the deceased were satisfied that there is no hand of the accused in the death of deceased. The deceased was not blessed with any child despite her marriage in the year 1996. What was going on in the mind of the deceased cannot be translated by anybody's imagination. Complainant in his statement has also admitted that his son Rajesh was married to Sheela Devi who died unnatural death for which they were booked under Section 304-B IPC. Complainant was also convicted and sentenced by the Court on 11.09.1995 and his appeal is statedly pending in the High Court. The witness did not disclose about writing Ex.P-1 in the FIR Ex.PA.

[22]. On the other hand, learned State counsel has relied upon **AIR 2011 SC 691, Bansi Lal, V. State of Haryana** to submit that if death of married woman takes place within seven years and there is no satisfactory explanation furnished by the accused in respect of

reasons and circumstances in which she had committed suicide then presumption under Section 113-B of the Evidence Act comes into play to presume that accused is responsible for the dowry death.

[23]. Fact and circumstances of the case if analysed on the basis of available material on record, then it will be culled out that the defence has produced satisfactory explanation for their innocence inasmuch as that mother and brother of the deceased did not support the prosecution case and rather created dent in the statement of PW-1 by saying that his statement was not free from Police pressure and there was no demand by the accused at any point of time, nor the deceased was ever harassed and humiliated by them. Secondly, the conviction recorded by the trial Court on the basis of sole testimony of complainant PW-1 on the strength of Ex. P-1 has to be reversed on the ground that document in question is totally inadmissible in law. The execution of writing Ex.P-1 has not been proved in terms of matching configuration of the writing of the deceased with that of writing appearing in Ex.P-1 and for want of any verification from the Postal Authorities vis-a-vis the factum of receipt of the writing by the complainant. The alleged seal appearing on the postal receipt does not make out any headway in the context of receiving the writing on some particular date. This is more so in view of conspicuous silence of complainant in his statement about the date of receipt of alleged writing by him and non-disclosure of the same in the FIR.

[24]. Cumulative effect of aforesaid facts and circumstances make out a case of innocence in favour of accused, therefore, impugned judgment of conviction dated 07.01.2004 and order of sentence dated 09.01.2004 are hereby set aside. Appeal is allowed, acquitting the appellant(s) from the charges.

Necessary consequences to follow.

August 21, 2015

Atik

(RAJ MOHAN SINGH)
JUDGE