

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

Criminal Appeal No. S. 371 SB of 2004
Date of decision : 05.02.2015.

Surender Kumar

..... Appellant.

versus

State of Haryana

..... Respondent.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

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

Present : Mr. K.S.Dhanora, Advocate for the appellant.
Mr. P.P.Chahar, AAG, Haryana.

K.C.PURI, J.

Challenge in this appeal is the judgment dated 04.12.2003 and order dated 10.12.2003 passed by Shri Kuldip Jain, learned Additional Sessions Judge, Bhiwani vide which the accused-appellant was convicted under Section 304-B and 498-A of the Indian Penal Code (in short – the IPC) and sentenced to undergo rigorous imprisonment for a period of eight years under Section 304-B and to further undergo rigorous imprisonment for a period of period of two years and to pay a fine of Rs.5000/- and in default thereof to further undergo rigorous imprisonment for a period of six months under Section 498-A of the IPC. Both the sentences, were however, ordered to run concurrently. The trial Court, however, acquitted accused Smt. Mayawati and Smt. Kamlesh from the charges levelled against them

after giving them benefit of doubt.

2. Briefly stated, the prosecution story is that on 31.01.2002 an application was moved to ASI Johri Lal of PS Siwani by Sube Singh, father of Smt. Urmila deceased alleging that he had married his daughter Urmila with Surender Kumar about four years ago and sufficient dowry was given in the marriage. Approximately Rs.2,00,000/- were spent on the marriage. Immediately after the marriage, Urmila was sent to her matrimonial home. Surender husband, mother-in-law and Nanad (sister-in-law married at Balsamand) of Urmila were not happy with the dowry articles given in the marriage. They started beating and harassing her. Whenever she visited his house she used to tell the entire happening. On this he along with his brother Prem and some other villagers had visited village Naloi and accused persons were then made to understand. About one and half months prior to the occurrence, Urmila gave birth to a male child. On 15.01.2002 in CHHUCHHAK a golden chain of the child, one clock an almirah, a machine and sufficient clothes etc., were given beyond his capacity. But accused persons were not happy with the articles given in CHHUCHHAK and they had sent back him as well as other accompanied persons after taunting and insulting them. On 31.1.2002 at about 4.00p.m. accused Surender made a telephonic call to him at the residence of neighbour Basau Ram by informing him that Urmila had died on account of inhaling spray. At this, he alongwith his brother Prem as well as wife, brother Wazir, daughter Bimla and 5/7 neighbourers reached village Naloi and found dead body of Urmila lying in the courtyard of her matrimonial home. On the basis of aforesaid

statement FIR was got recorded. Post mortem examination was got conducted. Accused were arrested. He also prepared rough site plan of the spot with correct marginal notes and further recorded statements of the witnesses. After receipt of report of FSL, and completion of formal investigation, challan against the accused was presented in court. Later on accused Mayawati and Kamlesh were ordered to be summoned to stand trial on an application moved under Section 319 of the Cr.P.C.

3. On presentation of challan, copies of documents were supplied to accused free of costs as required under section 207 Cr.P.C. Charge under Sections 304-B and 498-A of the IPC was framed against the accused. Accused pleaded not guilty and claimed trial.

4. In support of its case prosecution examined PW1 Sube Singh complainant, PW2 Zile Singh, PW-3 Constable Lachhman Dass, PW-4 Sanjay Kumar, PW-5 ASI Johari Lal, PW-6 HC Ram Kishan, PW-7 Dr. Vasudha Gupta, Constable Ramesh Kumar as PW-8 and thereafter prosecution closed the evidence.

5. After the closure of prosecution evidence, all the incriminating circumstances appearing against the accused were put to them in their statements recorded under section 313 Cr.P.C., they denied all the allegations and pleaded their innocence. Accused did not lead any evidence in defence.

6. The trial Court, after hearing the learned counsel for the parties convicted and sentenced the accused Surender Kumar vide judgment dated 04.12.2003 and order dated 10.12.2003, as aforesaid, whereas accused Smt.

Mayawati and Smt. Kamlesh from the charges levelled against them after giving them benefit of doubt. .

7. Feeling dissatisfied with the aforesaid judgment dated 04.12.2003 and order dated 10.12.2003, accused have directed the present appeal.

8. Learned counsel for the appellant has submitted that according to the allegations of the prosecution marriage of deceased Smt. Urmila has taken place on 4.5.1998 and the death of Smt. Urmila has taken place on 31.01.2002 i.e., within four years. It is submitted that in order to attract the ingredients of offence under section 304-B of the IPC, the most essential ingredients is soon before death, Smt. Urmila deceased was subjected to cruelty in connection with demand of dowry articles. It is submitted that in case the prosecution story is taken as it is, in that case, the material witnesses of the prosecution that is PW1 Sube Singh complainant, PW2 Zile Singh have stated that after the birth of male child, appellant and his family members demanded CHHUCHHAK i.e., customary gifts at the time of birth of a male child. It is submitted that Hon'ble Apex Court in authority **Kamlesh Panjiyar @ Kamlesh Panjiyarn vs. State of Bihar reported in 2005(1) R.C.R. (Criminal) page 861** has categorically held that demand of CHHUCHHAK i.e., custody gift at the time of birth of child, does not fall within the word of dowry and as such the accused cannot be convicted under Section 304-B of the IPC . It is further submitted that appellant has already undergone incarceration for a period of four years and sixteen days including remission of six months and twenty nine days. The occurrence

relates to 2002 i.e, more than 13 years back. Appellant is not a previous convict and even if the accused is convicted under Section 306 of the IPC in that case, the sentence suffered by the appellant is sufficient to meet the ends of justice.

9. The State counsel has supported the judgment of the trial Court. It is submitted that PW-1 Sube Singh has stated about the demand of motor cycle. That demand cannot be said to be in connection with CHHUCHHAK and falls within the ambit of dowry articles.

10. I have given my thoughtful consideration to the rival submissions made by both the sides and have carefully gone through the records of the case with their able assistance.

11. The main question for consideration in the present case is whether the ingredients of offence under Section 304-B of the IPC are made out or not ? The answer to that question is in negative. For that purpose the evidence of PW1 Sube Singh complainant, PW2 Zile Singh have to be re-apprised.

12. Both these witnesses have stated that about Rs.2,00,000/- were spent at the time of marriage of Urmila with appellant Surinder Kumar. They have further stated that in general terms after the marriage Surender Kumar husband, Mayawati mother-in-law and Kamlesh Nanad (sister-in-law) used to harass Urmila. They have further stated that before death of Urmila one male child was born. Complainant Sube Singh has stated that on 15.01.2002 they went to hand over customary gifts in the form of CHHUCHHAK but in-laws of Urmila defame them and sent them, back

and on 31.01.2002 at Naloi Urmila died due to poisoning. PW2 Zile Singh has stated on the same line and has further stated that Sube Singh and his two daughters had gone with CHHUCHHAK and on return Sube Singh told him that in-laws of Urmila are not happy with CHHUCHHAK articles. So, the testimony of Zile Singh (PW-2) regarding demand of CHHUCHHAK is based upon facts narrated by Sube Singh to him. Sube Singh PW-1 had not stated about the demand of motor cycle.

13. Otherwise also, the prosecution has to prove that soon before death Urmila was subjected to cruelty on account of demand of dowry articles. The Hon'ble Apex Court in authority **Kamlesh Panjiyar @ Kamlesh Panjiyarn's case (Supra)** has dealt in this aspect of the case and has categorically stated that demand of customary gifts at the time of birth of child or other ceremony as prevailing in different societies are not covered by expression dowry and as such not covered by offence under Section 304-B of the IPC. Similar view was taken by this Court in authority **Sushil Kumar and others vs. State of Haryana reported in 2005(3) R.C.R. (Criminal) page 129**, wherein **Kamlesh Panjiyar @ Kamlesh Panjiyarn's case (Supra)** was also discussed in the said case.

14. So, according to the testimony of PW1 Sube Singh complainant, PW2 Zile Singh, the only thing which makes out that there are general allegations of harassment of Urmila by appellants Maya Wati mother-in-law and Kamlesh Nanad. The learned trial Court has only convicted the appellants whereas other accused have not been convicted. Moreover, soon before death, no other demand has been mentioned by

these two witnesses. So, in these circumstances, the ingredients of offence of dowry death remains unproved and the learned trial Court has lost sight of this fact.

15. In view of the above discussion, the appeal is partly accepted and the accused stands acquitted under Section 304-B of the IPC.

16. Now reverting to the offence under Section 306 of the IPC.

17. The ingredient of offence under Section 306 of the IPC are made out against the appellant as Urmila died unnatural death within seven years of the marriage due to poisoning. She died in the house of the appellant and no reasonable explanation has been given by the appellant for her unnatural death. There are allegations of harassment at the hands of the appellant. Appellant being husband has to explain under what circumstances Urmila had died in the matrimonial home. So, in these circumstances the ingredient of offence under Section 306 of the IPC are clearly made out against the appellant and he stands convicted under Section 306 of the IPC.

20. Regarding quantum of sentence in respect of offence under Section 306 of the IPC, as per conviction slip, the appellant has already undergone incarceration for a period of four years and sixteen days including remissions of six months and twenty nine days. The occurrence relates to the period more than 13 years back. The appellant is not involved in any other case. So, appellants is sentenced to the period already undergone by him i.e. four years and sixteen days including remissions of six months and twenty nine days.

21. The appeal stands disposed of accordingly.

22. A copy of this order be conveyed to the trial Court for strict compliance.

February 05 , 2015

SV

**(K. C. PURI)
JUDGE**