

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-92-SB of 2004

Date of Decision : May 18, 2015

Shakti and another

..... Appellants

Vs.

State of Punjab

..... Respondent

CORAM: HON'BLE MRS. JUSTICE RAJ RAHUL GARG

1. Whether Reporters of local papers may be allowed to see the judgment?
 2. To be referred to the Reporters? Yes/No.
- Whether the judgment should be reported in the Digest?

Argued by :Mr. Gurnam Singh and
Mr. V.P.Singh, Advocates
for the appellants.

Mr. Surjeet Singh Chaudhary, DAG, Punjab.

RAJ RAHUL GARG, J

Husband and mother-in-law of the deceased Jyoti preferred this appeal against the impugned judgment dated 11.11.2003 rendered by Sh. O.P Garg, the then additional Sessions Judge (adhoc), Fast Track Court, Patiala whereby each appellant was convicted for committing offence punishable under Sections 304-B and 498-A of Indian Penal Code (for short 'IPC'), vide order of even date they were sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of ₹2,000/- with default clause, for committing offence punishable

under Section 304-B IPC and rigorous imprisonment for 2 years and to pay a fine of ₹500/- with default clause, for committing offence punishable under Section 498-A IPC.

Brief facts of the case are like this; that on 22.12.2002, on the statement of Surinder Kumar, father of deceased Jyoti, the FIR was recorded. Police received a telephonic message from Medical Officer, Rajindera Hospital, Patiala that Shakti resident of Sukhram Colony, Gali No.4, has brought his wife Jyoti dead to the hospital. ASI Zora Singh, reached Rajindera Hospital, Patiala and then recorded the statement of Surinder Kumar as Ex.P.A. As per Surinder Kumar, Jyoti was married to Shakti son of Jai Narain, about 2 years back. After 6/7 months of her marriage, she was being maltreated by her husband and mother-in-law Sheela Devi, for bringing insufficient dowry. They also started giving her beatings. They had sent his daughter many times after giving her beatings to their house telling her that she is the only daughter of her parents, as such she should bring money to them as insufficient dowry was given at the time of marriage. Surinder stated before the police that he and his wife had been sending Jyoti back to her matrimonial house after pacifying her. He further stated that his son-in-law and his mother Sheela Devi, had been harassing his daughter for bringing insufficient dowry telling her that her father had retired and got lump-sum money on retirement inspite of that she had brought less dowry in her marriage. As per complainant, he had given dowry to his daughter beyond his capacity. At about 9:30 A.M, his son-

in-law gave telephonic message that Jyoti was seriously ill, as such they should reach Rajindera Hospital, Patiala, quickly. Thereafter, the complainant, his nephew Mangat Singh and his brother-in-law's son Ashok Kumar reached Rajindera Hospital, Patiala and found Jyoti dead. He also expressed his suspicion on both the appellants stating that on account of bringing less dowry they had administered some poisonous substance to Jyoti and thus kill her. On this statement Ex.PA, ASI Zora Singh, made endorsement Ex.PA/1 and sent the same to police station for registration of the case, whereupon, Ranjit Singh, recorded the formal FIR as Ex. **PD**. Inquest report was prepared as Ex.PH. An application for conducting the post-mortem examination on the dead body of Jyoti, was moved which is Ex.PH/1. Post-mortem report is Ex.PE. Dead body was then handed over to Surinder Kumar (PW-1) vide receipt Ex.PE. Site plan of the spot Ex.PC was prepared. List of dowry articles is Ex.PC (there are two documents made as Ex.PC). Accused were arrested. Report of chemical examiner was obtained as Ex.PF and after completion of necessary investigations, the challan was put in the Court.

Finding a prima facie case against both the accused, they were charge sheeted for committing offence punishable under Sections 304-B and 498-A. To the charge, accused did not plead guilty but claimed trial.

After taking entire prosecution evidence, statement of accused under Section 313 Cr.P.C was recorded wherein each

allegation appearing in evidence against the accused was put to them, which was denied by them. The defence taken by the accused is this that they are innocent; that the case is false; they have been falsely implicated in this case. Jyoti had died her natural death as she was suffering from Epilepsy and was taking Aayurvedic medicine from Rishikesh and after taking medicine, she died. Medicine was brought from Rishikesh by her by going to Rishikesh along with her mother. Ex.DD is the certificate given by doctor B.S.Gupta, Medical Charitable Society, Rishikesh (Uttaranchal), showing that deceased suffering from generalized seizures (fits) and was under his treatment from 11.06.2002. Ex.DC is the slip issued by the same doctor which is dated 11.06.2002 bearing patient number and diagnosis as Epilepsy.

After hearing both the sides and appraising the entire material and evidence coming on record, the learned trial Court recorded the impugned judgment of conviction, thereby, convicting both the appellants for committing offence punishable under Sections 304-B and 498-A of IPC and sentenced them as mentioned in the above judgment

I have heard learned counsel for the appellants and learned State counsel, besides appraising the entire material coming on record.

Parties to this case belong to poor strata of the society. Appellant Shakti has given his occupation as labourer when his statement under Section 313 Cr.P.C.was recorded. Surinder Kimar (PW-1), father of the deceased, was in service but after attaining the

age of superannuation, he retired and, thereafter, he was working in NIS, Patiala. As per FIR, father of the deceased given dowry to Jyoti in her marriage beyond his capacity. Even list of dowry articles given in the marriage has been got exhibited as Ex.PC. From perusal of the same, it transpires that dowry given in the marriage to appellant Shakit, who is labourer cannot be said to be insufficient dowry in any manner. Of course, the adequacy or inadequacy of the dowry is relative terms depending upon the mental state of each individual.

The present case is one of dowry death. Dr. Karamjit Singh (PW-5), who conducted the post-mortem examination on dead body of deceased Jyoti and gave the cause of death after receipt of report of chemical examiner Ex.PF as that organo phosphorus compound pesticides detected in the exhibits No. I, II and III. Post-mortem report is Ex.PE. Thus from the above evidence, it is evident on the file that the death of deceased was due to organo phosphorus compound pesticides. It is also not disputed that the death of Jyoti had taken place within 7 years of her marriage. For convicting the appellants under Section 304-B IPC, the prosecution has to establish beyond reasonable doubt the following essentials:-

(a) Death of the woman was caused by burns or bodily injury or occurs otherwise than under normal circumstances.

(b) Such death took place within seven years of her marriage.

(c) The woman was subjected to cruelty or harassment

by her husband or his relatives.

(d) Such cruelty or harassment was for, or in connection with, any demand for dowry and

(e) Such cruelty or harassment was soon before her death.

In the case in hand, though the above a & b essentials are there yet there is no evidence on the file to show that the deceased was subjected to cruelty or harassment by the appellants soon before her death or that the cruelty or harassment was in connection with any demand for dowry.

In this case, FIR is prompt in time. As per Surinder Kumar-complainant, he received a message about serious condition of Jyoti and her admission in Rajindera Hospital, Patiala at 9:30 A.M, police recorded the statement of Surinder Kumar at 11:30 A.M. In his statement, Surinder stated that after 6/7 months of the marriage of his daughter Jyoti, the appellants started harassing her for bringing insufficient dowry and also started giving her beatings. They had been telling her that she is the only child of her parents, as such she should bring money from them as insufficient dowry was given to her in marriage. Little further, he states that the appellants had been telling her that her father retired and had brought lump-sum money in the marriage. On account of his retirement and even then insufficient dowry was given to her.

Thus from the FIR, it is evident that the complainant had raised two allegations against the appellants i.e. (1) that deceased Jyoti

is the only daughter of her parents as such, since insufficient dowry was given to her, therefore, she should bring money and (2) that her father had retired from service and got pensionary benefits and even then insufficient dowry was given to her. From the FIR itself, it is evident that complainant did not state that the appellants demanded particular amount as cash from the deceased telling her that since her father had retired, therefore, she should bring cash amount. On account of retirement of complainant, as per complainant himself, the grouse was that inspite of having been received lump-sum amount on account of retirement, insufficient dowry was given to her. Cash was demanded telling the deceased that since she was the only daughter of her parents and as insufficient dowry was given to her, therefore, she should bring more money.

Now, if we go to the statement of Surinder Kumar which was recorded as PW-1, he gave entirely different version. He did not state that cash was demanded from the deceased or that she being the only child of her parents or that insufficient dowry was given to her inspite of the fact that her father was having retiral benefits at his end.

Surinder Kumar (PW-1) deposed that after marriage, Shakti raised a demand of motorcycle and sent the message to this effect through his daughter to him. The demand of motorcycle is such a demand that had it been raised, there would not have been any reason for PW-1 to forget the same mentioning in Ex.PA i.e. FIR. Mangat

Singh (PW-2) stated that at one point of time, demand of scooter was

raised by Shakti. He did not state that motorcycle was demanded. There is a difference between scooter and motorcycle. Even no date, time and occasion finds mention in the statement as to when such demand was raised. Both the aforesaid witnesses were confronted with their statements Ex.PA and Ex.DA respectively on this point. As such, the statements of PW-1 and PW-2 regarding demand of motorcycle is inconsistent with the FIR itself and this material discrepancy cannot be brushed aside by simply stating that Surinder was in distress on account of his daughter's death and, therefore, he must have been forgotten to mention the same in statement Ex.PA.

Surinder Kumar (PW-1) further stated that Sheela Devi raised a demand of cash 2/3 times to his daughter.

Here again, this statement of PW-1 is not inconsonance with the FIR.

This witness did not state as to on which date, month and year and for what purpose, the demand of cash was raised. Even the amount demanded is also not mentioned in the FIR. Mangat Singh (PW-2), who is nephew of Surinder Kumar (PW-1), that is the relation witness, did not state about the demand of cash by Sheela Devi-appellant.

Bimla Devi (PW-3), mother of Jyoti, though stated about the demand of cash by the appellants yet did not specifically state that the aforesaid demand of cash was raised by Sheela Devi. She stated that that accused demanded cash out of the pensionary benefits of her

husband on the pretext that they have to start business.

The factum of demand of cash for starting of business, is not stated by PW-1. Even there is no mention as to what business, the appellant Shakti intended to start. Shakti is labourer. It is not believable that he would demand money from Jyoti for starting business. As such the statements of Pws regarding demand of cash for starting business is also not free from doubt. From FIR, it is evident that complainant stated that the appellants were having grouse of insufficient dowry after 6/7 months of marriage. This is also not believable that after 6/7 months of the marriage, the appellants would start harassing the deceased for bringing insufficient dowry. Had appellants felt that dowry given in marriage was insufficient, the trouble would have been started right from the day one.

The case of prosecution witnesses that for 6/7 months Jyoti was kept well in her matrimonial home goes to make the prosecution case doubtful regarding harassment of Jyoti on account of insufficient dowry or demand of cash on that account. It would have been understandable if the accused had raised demand of more dowry after passage of 6/7 months of marriage. It is the case, where in the FIR it does not find mention at all that the appellants demanded motorcycle or a particular amount of cash on account of starting of business. As such so far as the harassment or causing cruelty to deceased in connection with demand of dowry is concerned, prosecution has failed to prove the same beyond reasonable doubt. Also, there is no evidence on the file to

show that any such cruelty or harassment was soon before her death.

It was argued by learned counsel for the appellants that in fact Jyoti was a patient of Epilepsy, having generalized seizures (fits) on account of her aforesaid disease. She was taking Aayurvedic medicine brought from Rishikesh. She had brought the medicines from Rishikesh by going with her mother to Rishikesh and after taking the medicines, she died. Ex. DC and Ex. DD are the documents issued by the doctor B.S.Gupta of Rishikesh and these two documents show that deceased was given patient No. 62474 and was suffering from generalized seizures (fits) and was under his treatment from 11.06.2002. Bimla Devi (PW-3), during the course of her cross-examination stated that her daughter started suffering fits of Epilepsy in the house of accused (voluntarily) stating that because she was maltreated and badly beaten by the accused. From this statement of PW-3, it is evident that deceased was a patient of Epilepsy. Bimla Devi (PW-3), further admitted in her cross-examination that she had been to Rishikesh only once with her daughter for taking medicines from doctor for treatment of her Epilepsy. She further deposed that she had gone to Rishikesh with her daughter after her marriage and further tried to explain that her daughter suffered fits when the accused gave them beatings and snatched her son. The aforementioned facts regarding sufferance of Epilepsy on account of causing of cruelty to deceased by accused or when her son was snatched, did not find mention in FIR and even none of the witnesses deposed so. The fact

remains is this; that deceased had got medicine from doctor B.S.Gupta of Rishikesh, who is the Aayurvedic doctor, as his degree finds mention in the stamp put on Ex.DD as 'B.A.M.S'.

Though, there is no definite evidence on the file to show that the deceased had died only on account of taking the aforesaid Aayurvedic medicines yet it remains unexplained on the file as to how and under what circumstances, the deceased consumed poisonous substance like organo phosphorus compound pesticides.

It is the mind of the deceased which cannot be predicted as to under what circumstance, she had consumed poison. There is not even an iota of evidence available on the file to show that the appellants had ever abetted her to commit suicide. There is not even a single incidence available on the file which could show that the appellants ever aided or instigated the deceased to commit suicide

It is not the case of the prosecution that she was administered poison forcibly by the appellants.

It was contended by learned state counsel that as the death of deceased ensued within 7 years of her marriage i.e. by poison, therefore, the presumption of dowry death is there under Section 113-B of the Indian Evidence Act.

As I have held above that the evidence on the point of harassment of deceased in connection with demand of dowry is inconsistent and in fact demand of motorcycle or cash on account of starting of business remains unproved on the file, therefore, on the

basis of presumption under Section 113-B of the Indian Evidence Act, the appellants cannot be held guilty.

In *Manohar Lal Vs. State of Haryana, 2014 AIR (SCW) 3923*, it has been held that for the purpose of Section 304-B IPC, a presumption can be raised only on proof of the fact that death of the woman was caused by burns; that the death took place within seven years of her marriage. Further that she was subjected to cruelty or harassment by her husband or his relatives in connection with demand for dowry soon before her death. In that very judgment, death of bride had taken place within seven years of marriage. Statement of mother of deceased that accused used to harass her daughter on account of inadequacy of dowry and used to make demand for cash was there. In that case, it was held that the statement was general, and not specific. No specific incidence was indicated suggesting the cruelty or harassment made by the accused and further that though the allegation of demand of dowry was made but none of the witnesses stated that the deceased was harassed “soon before her death” for or in connection with demand of dowry.

The facts of the present case are similar to the aforecited judgment. I must say that the present case is even worst than the aforecited case. In this case, in the FIR, the complainant did not depose about demand of motorcycle or demand of cash by Sheela appellant for starting of business. The statement that the appellants asked the deceased to bring cash as she was the only child of her parents is not

supported by PW-1 when appeared as witness. There is no whisper in this regard in his statement recorded in the Court. The factum of money obtained by PW-1 on his retirement was narrated by PW-1 by stating that the appellants told the deceased that inspite of the fact that her father obtained lump-sum amount on his retirement, insufficient dowry was given to her. Thus from this statement, it is evident that the appellants did not raise demand for more dowry on that account and further that after keeping the deceased properly for about 6/7 months of her marriage, they would harassed her for insufficient dowry.

In Awadhesh Kumar Vs. State of U.P, 2014 (4) ADJ 644,

it was observed that there was no evidence produced on record showing demand of dowry by the appellant. Vague allegation was leveled in the FIR. As such, appeal was allowed holding that presumption under Section 304-B of the Indian Penal Code and 113-B could not be invoked against the appellant. In *Bakshish Ram and another Vs. State of Punjab, 2013 (4) SCC 131,* it was held by the Hon'ble Supreme Court of India that High Court, as a first Court of appeal, on facts must apply its independent mind and record its own findings on the basis of its own assessment of evidence. Mere reproduction of the assessment of trial Court may not be sufficient and in the absence of independent assessment by the High Court, its ultimate decision cannot be sustained. The role of the Appellate Court in a criminal appeal is extremely important and all the questions of fact are open before the

Appellate Court. It was also held in the aforecited judgment that one of

the essential ingredients amongst others in provisions of Section 113-B of Evidence Act and Section 304-B Indian Penal Code is that the woman concerned must have been 'soon before her death' subjected to cruelty or harassment " for or in connection with the demand for dowry". If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.

In the case in hand, what to speak of incident of cruelty is remote in time and stale but there is not even single incidence of harassment of deceased or causing of cruelty to deceased in connection with demand for dowry soon before her death. Another judgment on the point is *Balwant Singh and another Vs. State of Punjab, 2004* (7) *Supreme Court Cases, 724.*

In *Laxmi Narain @ Rajesh Vs. State, 2012* (2) *CCR 535,* it was held that only because death was unnatural, is not sufficient for conviction under Section 304-B, IPC.

In *Naresh and others Vs. State of Hayana, 2011* (3), *AICLR, 451,* it was held that bride was burnt within two years of marriage at matrimonial home while lighting the candle in washroom. In that case, no demand of dowry was proved against the husband as such conviction of husband under Section 304-B was set aside.

In view of the above recorded reasons and cited case law, the prosecution has failed to bring home guilt against the appellants beyond reasonable doubt, therefore, by giving benefit of doubt, this

appeal is accepted and judgment of conviction dated 11.11.2003 and order on sentence of even date; are set aside. Accused are acquitted. Their bail bonds and surety bonds are discharged. Fine, if any paid, is ordered to be returned to the appellants.

Copy of the judgment be sent to the trial Court for record.

(RAJ RAHUL GARG)
JUDGE

May 18, 2015
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