

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA, CHANDIGARH

CRA-D-1531-DB of 2014 (O & M)
Date of Decision : 22.04.2015

Nathu RamAppellant

Versus

State of Haryana and othersRespondents

Coram: HON'BLE MR.JUSTICE S.S.SARON
HON'BLE MR.JUSTICE RAMENDRA JAIN

Present: Mr. A.K. Yadav, Advocate for
the applicant/appellant.

Mr.Naveen Kaushik,
Addl.A.G.Haryana for the State.

S.S.Saron,J.

This appeal has been filed by Nathu Ram-appellant against the judgment and order dated 09.07.2013 passed by the learned Additional Sessions Judge, (Exclusive Court), Jhajjar, whereby, respondents No.2 to 5 have been acquitted of the offences punishable under Sections 498A and 304-B, 302, 316, 341 and 323 read with Section 34 of the Indian Penal Code ('IPC'- for short) and alternate charge under Section 307 read with Section 34 IPC. Along with the appeal, CRM No.30273 of 2014 has been filed seeking condonation of 354 days delay in filing the appeal.

The record of the learned trial Court has been requisitioned and the same has been perused.

FIR (Ex.PW5/A) in this case was registered on the statement (Ex.PW1/A) of Nathu Ram son of Chet Ram resident of

Gali Bolni, District Rewari aged 65 years (complainant/appellant) (PW1). He stated that he was resident of the above address and did labour work. He had eight children out of which six were sons and two were daughters. His daughter Babita @ Babli (deceased in the case) was married with Pawan (respondent No.4), while the other daughter Renu (PW4) was married with Narender (respondent No.3), both sons of Om Parkash (respondent No.2) resident of Dubaldhan. His daughters were married in November, 2010 as per Hindu rites and ceremonies. From that date only, his daughters were coming and going. His daughter Babita @ Babli was seven months' pregnant. They came to know on 25.07.2012 i.e. the date of occurrence, that their daughter Babita had died due to consumption of some poisonous substance. Then the complainant along with his family reached village Dubaldhan. He then came to know that his daughter Babita @ Babli had been killed by her husband Pawan (respondent No.4); her husband's younger brother ('devar') Narender (respondent No.3); Rahul; her mother-in-law Santra Devi (respondent No.5) and her father-in-law Om Parkash (respondent No.2) by administering some poisonous substance to her. It was submitted that legal action be taken against them and the post-mortem examination of his daughter be got conducted. They be given justice. His statement had been recorded, which he had heard and accepted as correct. They had done all this for not fulfilling their demands for dowry. The statement is signed by Nathu Ram (complainant) (PW1) and is attested by P/SI Satish Kumar, Police Station Beri (PW13) on 25.07.2012.

Police proceedings (Ex.PW13/A) were recorded by P/SI Satish Kumar, Police Station Beri (PW13). It is mentioned that information was received from the Control Room through wireless at the Police Station on the said day that at village Dubaldhan, Babita @ Babli wife of Pawan had died. On getting this information, P/SI Satish (PW13) along with Constable Daljit and Constable Zile Singh (PW3) reached village Dubaldhan and there they met Nathu Ram (complainant/appellant) (PW1). He got his statement recorded. It was written and read over word by word to him. He accepted his statement as correct and signed beneath it in Hindi. P/SI Satish Kumar (PW13) attested the statement. From the statement offences under Sections 498-A, 304-B and 34 IPC were found to be made out. The statement was sent through Constable Daljit to the Police Station for registration of a case. The number of the case was asked to be informed after its registration. P/SI Satish Kumar (PW13) was carrying out the investigation at the spot. A photographer and an FSL team were asked to be sent at the spot. Besides, the special reports were asked to be dispatched to the senior officers.

FIR No.219 dated 25.07.2012 (Ex.PW5/A) was registered by ASI Mukesh Kumar, Police Station Beri (PW5) on the said statement (Ex.PW1/A) of Nathu Ram (appellant). He made his endorsement (Ex.PW5/B) on the 'ruqa' (Ex.PW1/A). He also sent special report to the 'Illaq' Magistrate through Constable Vijay Kumar (PW8) without any delay.

The investigation in the case was conducted by P/SI Satish Kumar (PW13). EASI Surender Kumar, Photographer

(PW7) reached the spot and took photographs. He took nine photographs in all with a digital camera. During trial, these were tendered in evidence as Ex.PW7/A to PW7/J. P/SI Satish Kumar (PW13) prepared rough site plan (Ex.PW13/B). He also prepared inquest report (Ex.PW13/C), which bears his signatures. He moved an application (Ex.PW11/A) to the Medical Officer, General Hospital, Jhajjar for conducting postmortem examination on the dead body of Babita @ Babli. The doctor after conducting the postmortem examination handed over one sealed cardboard box having three plastic jars. The plastic jars had two seals on each jar. An envelope containing the MLR and forwarding letter were taken in possession. The articles were deposited with the 'Mohrar Malkhana', Police Station Beri.

The accused in the case Om Parkash (respondent No.2), Narender (respondent No.3) were arrested on 26.07.2012. They were produced before the learned 'Illaq' Magistrate on 27.07.2012. Pawan (respondent No.4) was arrested on 31.07.2012. He was produced before the 'Illaq' Magistrate on 01.08.2012. Santra (respondent No.5) was arrested on 02.08.2012 and she was produced before the 'Illaq' Magistrate on the same day.

A scaled site plan (Ex.PW6/A) was prepared by Head Constable Jai Chand (PW6) on 04.08.2012. His statement was recorded by P/SI Satish Kumar (PW13) under Section 161 of the Code of Criminal Procedure ('Cr.P.C.' – for short). Besides, the statements of Jitender (PW2) son of Nathu Ram (PW1), Jai Parkash son of Banwari (given up during trial), Constable Zile

Singh (PW3) were recorded under Section 161 Cr.P.C. on 25.07.2012. The statement of Vandana Mehta, Principal, Jawahar Navodaya Vidyalaya Kalo, Jhajjar (given up during trial) and Constable Zile Singh (PW3) were recorded under Section 161 Cr.P.C. on 06.08.2012. The statements of EHC Jaiveer, Lady Constable Rajpati (PW9), EASI Surender Kumar, Photographer (PW7) were recorded under Section 161 Cr.P.C. on 14.08.2012. The statement of Suresh @ Lala son of Murari Lal, Shanti Devi wife of Nathu Ram and Constable Vijay were also recorded.

After completing investigating in the case, police report ('challan') was prepared by SI/SHO Dharampal (PW12) and filed in the Court of the learned Additional Chief Judicial Magistrate, Jhajjar against respondents No.2 to 5 on 13.09.2012. The learned Magistrate inter alia observed that the essential ingredients of the offence under Sections 498-A, 304-B, 302, 316, 341, 323 read with Section 34 IPC were attracted. Besides, offence punishable under Sections 304-B and 302 IPC were exclusively triable by the Court of Session. Accordingly, vide order dated 31.10.2012 the learned Magistrate committed the case to the Court of the learned Sessions Judge, Jhajjar.

The case assigned to the Court of learned Additional Sessions Judge, (Exclusive Court), Jhajjar, who vide order dated 08.02.2013, framed charges against respondents No.2 to 5 on the allegations that Babita @ Babli aged 25 years of age (since deceased) was married with Pawan (respondent No.4) on 18.11.2010 and during her lifetime, he being husband, while Santra (respondent No.5) being mother-in-law, Om Parkash

(respondent No.2) being father in law and Nareneder (respondent No.3) being brother-in-law of deceased Babita @ Babli being family member of the husband of deceased, in furtherance of their common intention, subjected her to cruelty on account of unlawful demand of dowry and thereby they all committed an offence punishable under Section 498-A read with Section 34 IPC.

Secondly, on 18.11.2010, in the area of village Dubaldhan, falling within the jurisdiction of Police Station Beri, the above named accused harassed and humiliated Babita for not fulfilling their unlawful demand of dowry soon before her death, resulting in her unnatural death on 25.07.2012 within seven years of her marriage with Pawan (respondent No.4) and thereby they all committed an offence punishable under Section 304-B read with Section 34 IPC.

In the alternative it was alleged that on 25.07.2012 in the area of village Dubaldhan falling within the jurisdiction of Police Station Beri, the above named accused in furtherance of their common intention committed murder of Babita for not fulfilling their unlawful demand of dowry and thereby committed an offence punishable under Section 302 read with Section 34 of IPC. It was directed that accused be tried by this Court on the aforesaid charge. The charge was heard and understood by the accused. They pleaded not guilty and claimed trial.

The prosecution, in order to establish its case examined Nathu Ram, (complainant PW1), father of the deceased; Jitender (PW2) brother of Babita @ Babli (deceased);

Constable Zile Singh (PW3) who received the post-mortem report along with papers, Viscera along with sample seal which was handed over to P/SI Satish Kumar (PW13); Renu (PW4) the sister of the deceased Babita @ Babli who was married to Narinder (respondent No.3); ASI Mukesh Kumar (PW5) was examined. He received the memo for registering the FIR on the basis of which FIR was registered; Head Constable Jai Chand (PW6) Draftsman in SP Office Jhajjar. He prepared scaled site plan Ex.PW-6/A at the instance of P/SI Satish Kumar; EASI Surender Kumar (PW7). He took nine photographs Ex.PW7/A to PW7/J with his digital camera; Constable Vijay Kumar (PW8). He was handed over the special report by ASI Mukesh which he delivered to the 'Illaq' Magistrate on 25.07.2012 without any delay; Lady Constable Rajpati (PW9). She tendered in evidence her affidavit Ex.PW9/A regarding deposit of the viscera with the FSL at Madhuban on 13.08.2012; EHC Jaibir Singh (PW10) tendered in evidence his affidavit (Ex.PW10/A). He was MHC posted at Police Station Beri. P/SI Satish Kumar (PW13) on 25.07.2012 deposited the viscera with him, which he handed over to Lady Constable Rajpati (PW9) on 13.08.2012; Dr.Sher Singh, Medical Officer (PW11) tendered in evidence his affidavit (Ex.PW11/D). He conducted the post-mortem examination on the dead body of Babita @ Babli. A copy of the post-mortem report Ex.PW11/B which bears his and Dr.Vibha Chabra's signatures and FSL Report Ex.PW-11/C were also tendered in evidence. In his opinion, the cause of death in this case was due to aluminium phosphide. In cross-examination, it was submitted

that there was no mark of injury/struggles on the body of deceased Babita @ Babli. The clothes were intact; SI Dharampal (PW12) was posted as SHO at Police Station Beri on 28.08.2012. He prepared the 'challan' in the case under Section 173 Cr.P.C.; P/SI Satish Kumar (PW13) who conducted the investigation in the case was examined. Besides, documents including the FSL report (Ex.PW11/C) were tendered in evidence.

The statements of respondents No.2 to 5 in terms of Section 313 Cr.P.C. were recorded. Pawan (respondent No.4) in his defence stated that he was innocent and this was a false case. They had been falsely implicated in this case. The witnesses had deposed falsely against them. The true facts of the case were that Babita (deceased) and Renu (PW4) were married in a simple marriage ceremony and nothing was demanded or given in dowry. After marriage, Babita started residing with him (Pawan respondent No.4) while the rest of the family resided separately. Renu (PW4) had not started visiting their house as she was minor at the time of marriage and quite young in age. Babli (deceased) was kept with love and affection by him (Pawan respondent No.4). She had no complaint against Pawan or rest of the family. Money was neither given nor demanded from the family of Babita. Babita and Renu (PW4) were never harassed by him (Pawan respondent No.4), Narender (respondent No.3), Santra (respondent No.5) and Om Parkash (respondent No.2) on account of demand of dowry. He (Pawan respondent No.4) and Babli were living happily. He (Pawan respondent No.4) had some arguments on domestic affairs with

Babita @ Babli on 24.07.2014 and out of frustration he (Pawan respondent No.4) accidentally consumed some poisonous substance and he was admitted to PGIMS Rohtak. Their entire family went along with him (Pawan respondent No.4) to PGIMS Rohtak and stayed there. Only Babli @ Babita (deceased) remained all alone at the house and someone informed her that his condition was serious and fearing that he would die and due to the fear that she would be held responsible for his death, she also consumed some poisonous substance. Their neighbours informed them about this unhappy incident and his family along with the family of Babita, who were also present in PGIMS Rohtak reached village Dubaldhan and at the instigation of their opponents, the complainant's family falsely lodged the present report. He (Pawan) remained admitted in PGIMS (Post Graduate Institute of Medical Sciences - Hospital), Rohtak from 24.07.2012 to 26.07.2012. Similar statements were made by Om Parkash (respondent No.2), Narender (respondent No.3) and Santra (respondent No.5).

In defence, Raja Ram, Medical Record Clerk, PGIMS Rohtak was examined as DW1. He brought the summoned record regarding the treatment file of the patient Pawan (respondent No.4). According to the record, Pawan (respondent No.4) was admitted in unit 10/II PGIMS, Rohtak on 24.07.2012, vide CR No.65301 and he was discharged on 26.07.2012. The head of the unit was Dr. Nityanand and it was a suspected case of poisoning. The MLR of Pawan (respondent No.4) was on the treatment file. According to the MLR, he reached PGIMS Rothak

at 5.18 p.m. on 24.07.2012. He was brought by Narender (respondent No.3) who was brother of Pawan (respondent No.4). Dr.Mahesh (DW-2), Casualty Medical Officer, PGIMS Rohtak issued the MLR (Ex.DW1/A). It consisted of 78 pages. He had seen the discharge card (Ex.DW1/B) of patient Pawan (respondent No.4), which was issued from PGIMS Rohtak. It was regularly maintained record and remained in his custody.

Dr. Mahesh Mahla, Medical Officer, PGIMS Rohtak (DW2) was examined. He medico legally examined Pawan (respondent No.4) on 24.07.2012. The correct carbon copy of the MLR was Ex.DW2/A. He tendered in evidence his affidavit Ex. DW2/B. Dr. Mahesh Mahla (DW2) in his affidavit Ex.DW2/B submitted that he had examined Pawan Kumar (respondent No.4). He was accompanied by his brother Narender (respondent No.3).

Ishwar Singh son of Ram Kishan (DW3) Sarpanch of village Dubaldhan was examined; besides, Angoori wife of Rameshwar Dass (DW4) was also examined. They deposed regarding the marriage between Babita and Pawan (respondent No.4) as also Renu (PW4) and Narender (respondent No.3) and supported the defence version. The statement of Jitender Singh (PW2) recorded under Section 175 Cr.P.C. was got exhibited as Ex.D1. The statement of Renu (PW4) was recorded under Section 161 Cr.P.C. was exhibited in defence as Ex.D2. The certificate issued by Vandana Mehta, Principal, Jawahar Navodaya Vidyalaya, Kaloi (Jhajjar) regarding Rahul son of Om Parkash studying in 9th class and that he was present in the

Vidyalaya campus during the day and night with effect from 23.07.2012 to 30.07.2012 was exhibited as Ex.D3. The memo regarding attendance certificate of Rahul was exhibited as Ex.D4.

The learned trial Court after considering the evidence and material on record acquitted the respondents No.2 to 5.

The appellant has submitted that from the evidence on the file it was established that Babita @ Babli was married with Pawan (respondent No.4) on 18.11.2010 and she was subjected to cruelty in connection with demand for dowry by respondents No.2 to 5 till her death, which had occurred after approximately one year and eight months of her marriage. She was constantly nagged and harassed for dowry and was treated with cruelty by the accused/respondents No.2 to 5. From the statements of the prosecution witnesses, it is submitted that demand of dowry and cruelty soon before her death were duly proved, however, there had been misreading of oral and documentary evidence by the learned trial Court. It is submitted that Nathu Ram (complainant) while appearing as PW1 had inter alia stated that Pawan (respondent No.4) had openly stated that if he gave money to him for opening a shop then he would keep Babita @ Babli with him. According to Nathu Ram, Pawan (respondent No.4) had stated that either a motorcycle be given to him or money in lieu thereof be given. The complainant was not having the funds but he arranged an amount of Rs.40,000/- from somewhere which he gave to Pawan (respondent No.4). Thereafter he (Pawan) took Babita @ Babli with him to her matrimonial home. However, they again started quarrelling and

Pawan stated that the complainant should take his daughter back or she would be killed. Therefore, harassment was meted out to the daughter of the complainant. It is after postmortem examination that it came to their notice that Babita @ Babli had died due to consumption of some poisonous substance. It is submitted that the death due to poisoning was not an issue; besides, the ingredients to attract the provisions of Section 304-B IPC are fully established. Therefore, there is no reason whatsoever to disbelieve the oral testimonies of Nathu Ram (PW1) and Jitender (PW2).

We have given our thoughtful consideration to the case and perused the record of the learned trial Court.

The learned trial Court considered the evidence and material on record. After considering the statements of Nathu Ram (PW1), Jitender (PW2), Renu (PW4) and P/SI Satish Kumar (PW13), it was observed that after assessing the said evidence, it was evident that the period intervening between the marriage and death of Babita @ Babli was not much. Pawan (respondent No.4) and Babita @ Babli were married on 18.11.2010 and death had occurred due to consuming poison. It was observed that the witnesses including Nathu Ram (complainant PW1) had stated that after marriage of Babita @ Babli with Pawan (respondent No.4), the parents of Pawan and his brother Narender (respondent No.3) started torturing and harassing Babita @ Babli for bringing dowry below their expectations. They demanded a motorcycle or cash in lieu thereof. Since the dowry demands were not satisfied, Babita @ Babli had to suffer ill-treatment at

their hands. The complainant Nathu Ram had to intervene to make Pawan (respondent No.4) and the in-laws of his daughter understand.

The ingredients of the provisions of Section 304-B IPC read with Section 113-B of the Evidence Act were noticed and it was observed that a comprehensive picture that emerged was that the conditions precedent for establishing an offence under Section 304-B IPC were as follows:-

- (a) That a married women had died by burns or bodily injury or otherwise under normal circumstances;
- (b) Such death was within seven years of her marriage;
- (c) The victim was subjected to cruelty and harassment by her husband or any relative of her husband for or in connection with demand for dowry soon before her death.

It was noticed that if all the aforesaid ingredients were proved, the Court was to presume that such a person had caused dowry death by drawing a presumption under Section 113-B of the Evidence Act.

The question as to whether Babli had died an unnatural death was considered by the learned trial Court. It was said that the prosecution had to rule out the possibility of a natural or an accidental death so as to bring it within the purview of; 'death occurring otherwise than in normal circumstances'. In other words, it was said that there should be a nexus between

cruelty or harassment on the one hand and the demand for dowry on the other. The two, it was observed, must co-exist and should not be independent of one another. After going through the evidence and material on record, it was held that the death had occurred due to consuming aluminum phosphide and that there was no dispute that death by poisoning was unnatural death otherwise than under normal circumstance and would be covered under the first ingredient of the offence under Section 304-B IPC. It was, therefore, held that Babita @ Babli had died under suspicious circumstances or otherwise than under normal circumstances. It was further held that Babli had died within seven years of her marriage.

The next and main question that was considered was as to whether there was any demand for dowry by the accused soon before the death of Babita @ Babli. It was observed that Nathu Ram (PW1) did not state as to what specific articles in the shape of dowry was demanded by the accused from Babita (deceased). The mere statement of Nathu Ram to the effect that the accused had ill-treated Babita alias Babli for bringing inadequate dowry could not lead the Court anywhere. Coming to the demand of motorcycle or cash amount in lieu thereof allegedly made by Pawan (respondent No.4) for opening a shop, after perusing the statement of Nathu Ram (PW1) and his statement (Ex.PW1/A), it was observed that a collective reading of the same glaringly revealed that there was no mention, specific or otherwise, of any harassment, torturing or maltreatment of Babita @ Babli by her husband or her in laws on

account of inadequate dowry since marriage till she had died in her matrimonial home. It was specifically observed that in the last line of the statement (Ex.PW1/A) of Nathu Ram (complainant) made before the police, he appeared to have stated as an afterthought that his daughter had been administered poisonous substance due to not fulfilling the demand of dowry. It was observed that had there been cruelty or harassment meted out to his daughter for want of sufficient dowry since marriage then he would have given the details of the cruelty or harassment allegedly suffered by his daughter in her matrimonial home. He did not even mention regarding giving of cash amount at any point of time to any of the accused.

The learned trial Court did not find the prosecution version to be cogent and convincing that the deceased Babita @ Babli was subjected to cruelty in connection with demand of dowry. It was held to be not proved on record that dowry articles were recovered from the accused. There was nothing on record that the accused raised demand of dowry which never abated till her death. The prosecution had failed to prove the ingredient for the offence under Section 498-A IPC. It was held that there was no incriminating evidence against the accused as such the prosecution has failed to prove the charges against them and all the accused were acquitted. Therefore, even though some of the ingredients of the offence under Section 304-B IPC were found to exist, however, the allegation of any demand for dowry was not found to be there. It is for the said reason held that there was no incriminating evidence against the accused as

such the prosecution had failed to prove the charges against them and all the accused were acquitted.

It is to be noticed that the last line above the signatures of Nathu Ram, complainant (PW1), on the statement (Ex.PW1/A) made by him before the police in fact was added later. The said statement has been recorded in Hindi and is signed by Nathu Ram, complainant. A close perusal of the same shows that it is after he had stated that his statement had been recorded, which he had heard and was correct, that he further stated that the accused had done all this for not fulfilling their demand for dowry. This line, 'that the accused had done all this for not fulfilling their demand for dowry' has been added later so as to make out a case for the offence under Section 304-B IPC. In fact one word of the last line it appears is written over the signatures of Nathu Ram in Hindi, besides the said line has been squeezed in between the end of his statement and above his signatures. Except for the last line, there is no other allegation in the statement (Ex.PW1/A) of the complainant regarding demand for dowry by the accused respondents No.2 to 5 from Babita @ Babli. Had the last line not been added, the case would not have been registered for the offence under Section 304-B IPC. When these aspects are considered with the deposition of Nathu Ram (PW1) in Court it is clearly evident that improvements were made by Nathu Ram (PW1) while deposing in Court from his statement (Ex.PW1/A) made before the police. There is otherwise no other allegation in the statement (Ex.PW1/A) that Pawan (respondent No.4), his parents i.e. Om Parkash and Santra

(respondents No.2 and 5) or his brother Narender (respondent No.3) had tortured or ill-treated Babita @ Babli for or in connection with any demand for dowry or that inadequate dowry was got by her.

The statement of the complainant Nathu Ram (PW1) during his deposition in Court brings to the fore the contradictions and improvements that were made by him while deposing in Court from his statement (Ex.PW1/A) before the Police. This is evident from his cross examination. Nathu Ram (PW1) in cross examination was confronted with his statement (Ex.PW1/A) recorded before the police and on the basis of which FIR was registered. He admitted that he had signed his statement after admitting it to be correct. He deposed that before the police he stated that dowry was given in the marriage as per his capacity to both his daughters Babita @ Babli (deceased) and Renu (PW4). His attention was drawn to his statement (Ex.PW1/A) and this fact it was found was not recorded in it. Similar was the position regarding he deposing that he had stated before the police that after two months the accused had started torturing and harassing both his daughters on account of insufficient dowry. This was also got confronted with his statement (Ex.PW1/A) wherein it was not recorded. The deposition regarding Pawan (respondent No.4) coercing his daughter to bring money to enable him to open a shop was got confronted with his statement (Ex.PW1/A) and this was not found mentioned therein. He also deposed that he had stated before the police that there was a quarrel between Babli and Pawan

(respondent No.4) and she was sent to his house at Gadibolni. He was confronted with his statement (Ex.PW1/A) wherein it was not recorded. He had deposed that he had stated before the police that she (Babli) remained with him for 1 ½ months and then her husband came to his house but again they quarrelled with each other with regard to the above mentioned demand of Pawan. He was confronted with his statement (Ex.PW1/A) wherein it was not so recorded. He deposed that he had stated before the police that he counseled Pawan and Babli but Pawan openly stated that if he gave money to him only then he would keep Babli with him. He (Pawan) stated that either he (Nathu Ram) gives him money or a motorcycle. It is stated that he had no funds but from somewhere he arranged and gave Rs.30,000/- and then stated that he gave Rs.40,000/- to accused Pawan. He was confronted with his statement (Ex.PW1/A) wherein it was not recorded. He deposed that he stated before the police that after he gave money, Pawan took Babli with him to her matrimonial home. However, they again started quarrelling and Pawan stated that he should take his daughter or otherwise she would be killed. He was confronted with his statement Ex.PW1/A wherein it was not so recorded. It is further deposed that he had stated before the police that Babli came back to his house and after three-four months, he on the advice of his cousin brother sent her back. This also on being confronted was found to be not recorded in Ex.PW1/A. He stated before the police that after one/one and a half months his daughter telephoned him in the evening on 24.07.2012 that Pawan had given her a beating and

she requested that he should bring her back. This also on being confronted was found to be not recorded in Ex.PW1/A. He deposed that he had stated before the police that on the evening on the same day i.e. 24.07.2012, his son received a telephone from the father of Pawan that his daughter had died. On being confronted it was found to be not recorded in Ex.PW1/A.

These improvements on the part of Nathu Ram (PW1) evidently show that it was not initially a case of any demand for dowry. Besides, there is also some vagueness as to from where he got a sum of Rs.40,000/-, which he states he gave to Pawan. In cross examination he states that he did not know the name of the person who had given Rs.40,000/- to him, which he gave to the accused. He also states that he had a bank account but there was no money in his account. It is also stated that there was no writing regarding the borrowing of Rs.40,000/-. It is stated that he had given a list of dowry to the police; however, no such list it is mentioned was available on the judicial file. Then he again stated that he had not given any list of dowry articles to the police. He had no bills of articles given in dowry. He had no photographs of the marriage showing that any dowry articles were given. Therefore, the allegations of demand for dowry being made by the accused are evidently an afterthought.

The deposition of Jitender (PW2), brother of Babita @ Babli (deceased) was also considered by the learned trial Court. It was observed that he had given a different version from that given by his father Nathu Ram (PW1).

Jitender (PW2) inter alia states that they had given Rs.20,000/- to Babita @ Babli so as to enable her to settle in her matrimonial home. Later the accused raised a demand for a motorcycle or cash amount of Rs.40,000/- to enable Pawan (respondent No.4) to open a shop. Pawan held out threats that if they did not meet their demands, he would divorce Babita @ Babli. However, they on the advice of the uncle i.e. father's elder brother of Jitender (PW2), sent Babita @ Babli back to her matrimonial home without giving anything. Thereafter, it is he (PW2) who was informed on telephone by Babita @ Babli on 24.07.2012 in the evening at about 8.00 p.m. that her husband, mother in law, father in law and Narender, brother in law were beating her. Since the father of Jitender (PW2) was not at home at that time as he was busy in his personal engagement, it is Jitender (PW2), who disclosed everything to his elder brother Bijender. He said that they would hold consultations amongst themselves after their father (Nathu Ram) returned. In the meantime, Jitender (PW2) etc. tried to telephone on the number from which Babita @ Babli, sister of Jitender (PW2), had telephoned but it was found switched off. His father returned late at about 10.00 p.m. They told him about the telephone conversation with Babita @ Babli. He, however, said that they would go in the morning. On the next day at about 5.00 a.m. they received a telephone call from someone about the death of Babita @ Babli. His father along with their relatives/family members went to Dubaldhan in a private vehicle and they found Babita @ Babli dead. There were marks on both her wrists,

ankles and hands. He (PW2) also saw injuries marks on both the wrists, ankles and hands; besides, foam was coming out from her mouth. He (PW2) found that his younger sister Renu (PW4) was confined in a room. On inquiry, she disclosed that Babita @ Babli had been killed by all of them while she was detained in a room after a severe beating.

Jitender (PW2) in his cross examination deposed that he had stated before the police that when the accused started harassing Babli on account of persistent demand for dowry that is cash or something, she was constrained to live with them for about two months. He was confronted with his statement (Ex.D1) recorded under Section 175 Cr.P.C. where this fact was not so recorded. He (PW2) also deposed that he stated before the police that she was sent back with Rs.20,000/- to her matrimonial home with the intervention of her uncles/relatives. This was also got confronted with his statement (Ex.D1) wherein it was not so recorded. He was also confronted regarding the fact that he had stated before the police that the accused respondents No.2 to 5 as also her husband's sister ('nanad'), whose name he did not know used to harass Babli. This was also got confronted with his statement (Ex.D1) wherein it was not so recorded. He also deposed that he had stated before the police that on the eve of 'Sakrant' they brought Babli to their house. When they asked her in laws to take her back, they said that either they should give a bike (motorcycle) or Rs.40,000/-in cash for Pawan (respondent No.4) to open a shop. Pawan (respondent No.4) had held out threats that if they did not meet his demand, he would divorce

Babli. However, on the advice of his uncle/father's elder brother, they sent Babli back to her matrimonial home without giving anything. He (PW2) was confronted with his statement (Ex.D1) wherein it was not so recorded. Other discrepancies of Jitender (PW2) with his statement (Ex.D1) recorded during inquest proceedings under Section 175 Cr.P.C. were got confronted with which did not find a mention in his statement (Ex.D1). The learned trial Court in view of the material improvements and contradictions made by Jitender (PW2) did not find his deposition to be credible.

Renu (PW4), the sister of Babita @ Babli and married to Narinder (respondent No.3) deposed regarding the marriage of her sister Babita @ Babli with Pawan (respondent No.4) and her own marriage with Narinder (respondent No.3). She stated that after sometime her in laws' started to harass them on account of demand for dowry. They were demanding more money even though her parents had given sufficient dowry in marriage as per their capacity. Her sister Babita @ Babli was given a beating by the accused respondents No.2 to 5 on 24.07.2012 at about 3.00 p.m. Thereafter during the night the accused i.e. respondents No.2 to 5 again gave a beating to her sister Babita @ Babli while she (PW4) was confined in a room. The accused had held out threats that if she raised an alarm they would kill her. They stated that they would kill her as they had killed her sister Babita @ Babli by administering poison to her.

Renu (PW4) was cross examined at length and was confronted with her statement (Ex.D2) made before the police.

She stated that her statement was recorded by the police but she did not know what they had written in it. It is stated that her statement was not read over to her. It is stated as correct that on the date of her deposition i.e. 14.03.2013 she had been 'tortured' (sic.- tutored) to make statement in the Court. She deposed that she had stated to the police on 24.07.2012 that they were beaten at 3.00 p.m. She was confronted with her statement (Ex.D2) wherein it was not so recorded. She also did not remember whether she had stated to the police that during the night, the accused persons gave a beating to her and also to her sister Babli and they confined her in a room; besides, threats were held out to her that if she raised an alarm they would kill her. She was confronted with her statement (Ex.D2) wherein these facts were not recorded. She did not remember whether she had stated to the police that the accused had said that they would kill her as they had killed her sister Babli by administering poison to her. On being confronted with her statement (Ex.D2) the said fact was not mentioned. It is stated as correct that when she was married she was less than eighteen years. She did not remember for how many days she remained at the house of her in-laws for the first time.

After going through the entire deposition of Renu (PW4), it was observed by the learned trial Court that she was not in her matrimonial home at the relevant time and she was introduced as a witness.

The oral evidence of Nathu Ram (PW1), Jitender Kumar (PW2) and Renu (PW4), does not inspire any confidence

to hold or come to the conclusion that soon before the death of Babita @ Babli she was subjected to cruelty for or in connection with any demand for dowry. The allegations of demand for a motorcycle or cash amount in lieu thereof said to have been made are not borne out from the deposition of the witnesses. It is to be noticed that Nathu Ram (complainant) appearing as PW1 stated that he gave Rs.30,000/- and then said he gave Rs.40,000/- to the accused so as to settle his daughter in her matrimonial home. However, he is quite vague as to from where he arranged the sum of Rs.40,000/- which he is stated to have given. He mentions that he did not know the name of the person who gave him Rs.40,000/-. He also states that no writing was recorded in this regard. Moreover, he accepts that he has a bank account but also states that there is no money in it. Therefore, the fact of giving Rs.40,000/- by him to the accused is not established or proved on record. There is also no evidence that Babli had complained about any ill-treatment meted out to her by the accused persons on account of inadequate dowry said to have been given in the marriage. Rather, it has come on record that so far as demand for some amount in cash was concerned, the accused Pawan is stated to have demanded the amount for opening his shop.

It is also to be noticed that the respondents No.2 to 5 have raised a defence that on 24.07.2012, Pawan had some arguments on domestic affairs with Babli @ Babita and out of frustration he accidentally consumed some poisonous substance.

He was got admitted in PGIMS, Rohtak. The entire family of the

accused i.e. respondents No.2 to 5 had gone along with Pawan to PGIMS, Rohtak and they stayed there. Babli @ Babita remained alone at the house. Somebody informed her that the condition of Pawan was serious and fearing that he would die and she may be held responsible for his death, she also consumed some poisonous substance. They along with the family of Babita who were present in PGIMS Rohtak reached village Dubaldhan and at the instigation of their opponents, the family of the complainant lodged the report.

The accused respondents No.2 to 5, in support of their defence, examined Raja Ram, Medical Record Clerk, PGIMS, Rohtak (DW1), who stated that the patient Pawan son of Om Parkash was admitted in PGIMS Rohtak on 24.07.2012 and he was discharged on 26.07.2012. The treatment file consisting of 78 pages was exhibited on record as Ex.DW1/A. Besides, the discharge card was exhibited as Ex.DW1/B.

Dr. Mahesh Mahla, Medical Officer, PGIMS Rohtak (DW2) stated that he medically examined Pawan on 24.07.2012. He perused the MLR (Ex.DW2/A); besides, tendered in evidence his affidavit (Ex.DW2/B). According to his affidavit (Ex.DW2/B), the following injury was present on the person of Pawan:-

“1. Gastric lavage done. Blood sample taken. Both sealed and packed, handed over to PP Incharge PGIMS Rohtak. Advised Physician opinion.

Patient kept under observation within a duration of 24 hours and kind of weapon was poison.”

In cross examination, it is stated by Dr. Mahesh Mahla (DW2) that it was wrong to suggest that as per MLR (Ex.DW2/A), he could not tell whether it was a case of poisoning or not. He voluntarily stated that he had taken the gastric lavage sample and blood sample for chemical analysis. This was a case of suspected poisoning. He had packed and sealed the gastric sample and blood sample, which were handed over to the PP Incharge PGIMS, Rohtak for chemical analysis. Without FSL report he could not tell what type of poison was there but it was a case of poison. It is stated as wrong to suggest that he prepared a false report at the instance of Pawan.

The defence also examined Ishwar Singh, Sarpanch of village Dubaldhan as DW3 and Angoori wife of Rameshwar Dass (DW4). They both inter alia stated that no dowry was demanded or given in marriage. After marriage Pawan and Babita @ Babli separated from their in laws. They had separate mess and kitchen. They had no dispute and they were living peacefully. Babita it is stated was kept with love and affection. Regarding the incident of 24.07.2012 it is stated that some minor dispute between Babita and Pawan had occurred regarding preparation of meal as Babita @ Babli had not prepared meals and she started arguing with Pawan and said some harsh words. Pawan out of frustration consumed some poisonous substance and he was taken to PGIMS Rohtak for treatment at about 4.00/4.15 p.m. Both of them were cross examined at some length.

The facts and circumstances evidently show that there is indeed no evidence to establish that Babita @ Babli soon

before her marriage was subjected to cruelty for or in connection with demand for dowry. The defence set up by the accused respondents No.2 to 5 is plausible and carries weight.

It is also to be noticed that Jitender (PW2) in his deposition states that there were injuries on both the wrists, ankles and hands of Babita @ Babli (deceased). However, in the postmortem report (Ex.PW11/B), it is mentioned that there were no fresh external injuries seen on the dead body. Dr. Sher Singh (PW11) in his cross examination also submits that there was no mark of injury/struggle on the body of deceased Babita @ Babli. The death on the basis of the FSL report (Ex.PW11/C) has been opined to be due to aluminum phosphide poisoning. Therefore, the allegation of injuries on the wrists, ankles and hands are not borne out from the record and stand discounted.

The learned trial Court has considered the evidence and material on record and acquitted respondents No.2 to 5. The findings and reasoning recorded by the learned trial Court are based on sound reasoning and do not warrant any interference.

In the facts and circumstances, we find no merit in the appeal and the same is accordingly dismissed. Since the appeal has been dismissed on merit, the question of delay in filing the appeal is only academic and the application seeking condonation of delay in filing the appeal is also dismissed.

(S.S.Saron)
Judge

22.04.2015

anil/A.Kaundal

Amit Kaundal
2018.02.02 14:42
I attest to the accuracy and
integrity of this document

(Ramendra Jain)
Judge