

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

CRA-S No.2231-SB of 2010 (O&M)
Date of decision: 04.02.2015

Salamudin and anotherAppellants

Versus

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN.

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?

Present: Mr. Dhirinder Chopra, Advocate
for the appellants.

Mr. Mehardeep Singh, DAG, Punjab.

JITENDRA CHAUHAN J. (Oral)

1. Appellants, namely, Salamudin and Bimla, have filed this appeal against the judgment of conviction and order of sentence dated 13.04.2010, passed by the learned Additional Session Judge (Fast Track Court), Bathinda, vide which the appellants were convicted under Section 304-B read with Section 34 of Indian Penal Code, 1860, (hereinafter referred to as the 'Code') and sentenced to undergo rigorous imprisonment for a period of ten years.

2. The brief facts of the case in hand, are that, on 01.04.2008, SI Mohinder Singh along with other police officials was present near Phatak Bangi Nihal Singh Wala, where Niaz Mohammad along with Mangtu Ram Sarpanch met the police party. Niaz Mohammad got recorded his statement that his niece Nazmin Bano was married with Salamudin on 11.08.2007. Sufficient dowry was given. After 2/3 days of marriage accused persons and other relatives of accused started maltreating Nazmin Bano for bringing less dowry. Complainant and his brother tried to dissuade them from making dowry demands. Father of Nazmin Bano died on 22.11.2007, but accused did not mend their behaviour. On 29.03.2008, Salamudin took Nazmin Bano back to her matrimonial home with the promise that she will not be maltreated. Nazmin Bano stated that she will be killed and refused to go. However, the complainant's family persuaded her to go. On 31.03.2008, at about 5.00 pm. the complainant received a telephonic message that Nazmina Bano has died. Complainant and other persons visited the house of accused and found Nazmin Bano dead with strangulation marks around her neck. Ruka was sent to Police Station for registration of the case against the accused. Usual investigation was conducted. Post mortem of dead body was got conducted. Rough site plan of the place of occurrence was prepared. Statements of the

witnesses were recorded. Accused were arrested. On completion of necessary investigation, challan was presented against the accused.

3. On presentation of challan, copies of the same were supplied to the accused free of cost as envisaged under Section 207 Cr.P.C. Since, the case was not triable by the Ilaqa Magistrate, hence the same was committed to the Court of Sessions Judge, Bathinda.

4. Thereafter, charge under Section 304-B IPC, was framed against the accused, to which they pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution examined Niaz Mohammad, Complainant as PW-1, Mangtu Ram, Sarpanch of the village as PW-2, Sub Inspector Om Parkash as PW-3, Sub-Inspector Mohinder Singh, Investigating Officer as PW-4, Assistant Sub-Inspector Ranjit Singh as PW-5, Mumtaz Khan cousin of deceased as PW-6, Dr. Vijay Mittal as PW-7, Hari Singh as PW-8, Patram as PW-9, Sarafat Ali as PW-10, Molvi Mohammad Amin as PW-11, Akhtar Hussain as PW-12.

6. After the conclusion of evidence of prosecution, the statement of appellant-accused was recorded under Section 313 Cr.P.C. and the entire incriminating evidence collected by the prosecution was put to accused to tender explanation for the same.

The appellant-accused pleaded innocence and stated it is a case of false implication. It was asserted that no dowry was even demanded from the deceased. There is no tradition in their community/religion to demand any dowry, the deceased had illicit relations with one Chhotu Khan, and was under depression on account of death of her father which resulted in committal suicide. In defence sole witness, namely, Bhupinder Singh was examined as DW-1. Thereafter, the accused-appellants closed their defence evidence.

7. The learned trial Court, after hearing learned counsel for the parties and after appreciating the evidence on record, convicted and sentenced the appellant-accused as under:-

NAME CONVICT	OF	OFFENCE UNDER WHICH PUNISHED	SENTENCE
Salamudin		304-B IPC	Rigorous Imprisonment for a period of 10 years.
Bimla		304-B read with Section 34 IPC	Rigorous Imprisonment for a period of 10 years.

8. Feeling dissatisfied with the judgment of conviction and order of sentence dated 13.04.2010, the accused/appellants have preferred the present appeal, which was admitted on 14.12.2010.

9. Learned counsel for the appellants contends that the death in the instant case is not relatable to the demand of dowry, therefore, the presumption under section 113 (b) of the Evidence

Act, ought not have been drawn. There is an inordinate delay in lodging the FIR. The version put-forth by the prosecution is contradictory to the medical evidence. The alleged occurrence took place on 31.03.008, at about 05:00 p.m. Whereas, the FIR was registered on 01.04.2008 at 01:50 a.m. Special Report reached the JMIC (D) on 01.04.2008 at 09:15 a.m.

On the other hand, the learned State Counsel has vehemently argued that the prosecution has been able to prove its case against the accused-appellants beyond a shadow of reasonable doubt and prays for dismissal of the appeal.

I have heard the learned counsel for the parties and have gone through the case file and record carefully with their able assistance.

This Court first is to ascertain whether it is “dowry death” or not. Section 304-B of the Indian Penal Code, reads as under:-

“(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and

such husband or relative shall be deemed to have caused her death. Explanation.—For the purpose of this subsection, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

This Section has four essentials:-

(1) The death of a woman should be caused by burns or badly injury or otherwise than under normal circumstances.

(2) Since death should occur within seven years of her marriage.

(3) The woman must have been subjected to cruelty or harassment by her husband or relatives of her husband.

(4) The cruelty or harassment should be for or in connection with demand of dowry.

The undisputed facts of the present case are that the deceased, namely, Nazmin Bano died an un-natural death at her matrimonial home within 7 years of her marriage. It has come in the evidence of Dr. Vijay Mittal (PW-7) that larynx was fractured and congested. Trachea was congested with pectichial hemorrhages. It

has also come on record that conjunctiva was having pectichial haemorrhages. The ligature mark which is transverse and about 17 cm long and 1 cm broad at the level of thyroid cartilage is also there. More so, echmosis was present. It has come in evidence that before 15-20 days from her death, deceased Nazmeen Bano, visited her parental house and narrated about the misbehaviour and maltreatment by the accused. On 29.03.2009, accused-Salamudin took his niece, the deceased, at his house with the promise that he will not maltreat her. Though, she was not ready to go but the family prevailed upon her to accompany the accused-Salamudin. The accused might have repeated his demand of bringing motorcycle. On 31.03.2008, she died an unnatural death at her in-laws house. Thus, it is proved on record that the death of the deceased was un-natural or otherwise than under normal circumstances and that death occurred within seven years of her marriage. The marriage in the instant case was solemnized in the month of August, 2007, whereas the victim died in the month of March, 2008, at her matrimonial home. Now, the only question which needs to be determined is that whether the deceased was subjected to cruelty or harassment on account of demand of dowry soon before her death.

In dowry death cases, direct evidence normally cannot be collected as it is always within the four walls of the matrimonial

home. Such case may be proved by circumstantial evidence-Section 304-B of the Code read with Section 113-B of the Evidence Act indicates the rule of presumption of 'dowry death'. The Court has to scrutinize the evidence of family members in order to reach to a conclusion that there was cruelty or harassment by her husband or relatives for or in connection with any demand for dowry soon before her death then it shall be dowry death.

In “*Surinder Singh vs. State of Haryana*”, 2014 (1)

Recent Criminal Reports (Crl.)535 (SC), it has been held in para No.25 as under :-

“Before closing, the most commonplace argument must be dealt with. In all cases of bride burning it is submitted that independent witnesses have not been examined. When harassment and cruelty is meted out to a woman within the four walls of the matrimonial home, it is difficult to get independent witnesses to depose about it. Only the inmates of the house and the relatives of the husband, who cause the cruelty, witness it. Their servants, being under their obligation, would never depose against them. Proverbially, neighbours are slippery witnesses. Moreover, witnesses have a tendency to stay away from courts. This is more so with neighbours. In bride burning cases who else will, therefore, depose about the misery of the deceased bride except her parents or

her relatives? It is time we accept this reality. We, therefore, reject this submission.”

PW-1-Niaz Mohammad, is uncle of the deceased-Nazmin Bano. He stated that after two or three days of marriage, the accused started harassing her for not bringing enough dowry and a motorcycle in marriage. The witness along with Sitar Khan father of the deceased went to the house of the accused to dissuade them from raising the demand for dowry including the motorcycle. On 22.11.2007, Sitar Khan father of the deceased expired due to illness, even after the death of his brother, the accused did not stop to maltreating his niece-the deceased. On 29.03.2008, her husband took her alongwith him on the promise that he will not maltreat her, but the deceased had expressed serious apprehension that the accused will kill her. On 31.03.2008, she died an un-natural death at her in-laws house. During his cross-examination, though this witness stated that in their religion giving of dowry and demanding of dowry is against the principles of Islam, but it is a well known fact that still the dowry is often demanded and given in the Muslim marriages.

PW-2-Sarpanch, Mangtu Ram, stated that her in-laws had been demanding a motorcycle. This witness along with Niaz Mohammad after hearing about the death, reached the house of her in-laws, her dead body was lying in the verandah on a cot having

marks of strangulation on her neck. This witness went to the police station along with Niaz Mohammad to report the matter to the police. Though, this witness has stated in his cross-examination that in the marriage whatsoever was given by the parents of the deceased was as per their wishes and at that time there was no demand. This reply does not cut much ice as the demand of dowry could be before or after the marriage, if not at the time of marriage, as in this case. In this case, it is proved that demand of a motorcycle was raised after marriage and soon before her death.

PW-6-Mumtaz Khan, a cousin of the deceased corroborates the prosecution case and proves that the in-laws were demanding dowry including a motorcycle.

So, Niaz Mohammad, PW-2, Sarpanch, Mangtu Ram and PW-6, Mumtaz Khan, are the best witnesses who are trustworthy qua demand of dowry by the husband.

From the statements of the above witnesses, it is proved that there was demand of dowry including the demand for a motorcycle. The demand of a motorcycle might have been raised by the husband himself but the allegations of demand of dowry by mother-in-law, Smt. Bimla are general and vague. There is no specific demand by accused-Bimla. The motorcycle, if had been given, was to be used and benefit of the husband, and the mother-in-

law was not supposed to use the same. This Court feels that the allegations that she i.e. mother-in-law, was demanding dowry, in the absence of specific demand of a particular item which would not benefit her or to be used by her, is a weak type of accusation and evidence, which would be sufficient to hold her guilty under Section 304-B of the Indian Penal Code. Admittedly, the unnatural death took place at her in-laws house, which the husband failed to explain the mysterious circumstances under which the wife/victim ended her life. The husband failed to rebut the presumption under Section 113-B of the Evidence Act. So, it is held that the prosecution has fully proved its case against the husband-Salamudin beyond reasonable doubt. The learned trial Court has rightly convicted and sentenced the accused-appellant-Salamudin as stated in Para No.1, of this judgment and there is no scope to interfere.

Now, this Court will deal with the case of the appellant-Smt. Bimla. It is commonly known that in matrimonial disputes between the parties, there is a tendency to rope in the parents-in-law and they are made to bear the brunt. In Preeti Gupta and another Vs. State of Jharkhand and another AIR 2010 SC 3363, it was held by the Apex Court as under :-

“The tendency of implicating husband and all his immediate relations is also not uncommon. At times,

even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.”

There is no evidence to prove the active role of the accused-appellants regarding demand of dowry, in the present case. The *sine qua non* for the dispensation of justice in the present case is bringing the guilty to charge and acquitting the non-guilty. There are general and vague allegations of demand of dowry against mother-in-law-Smt. Bimla. None of the prosecution witnesses have stated that the mother-in-law demanded any specific article or on a specific occasion in dowry. The motorcycle is to benefit and to be used by

the husband and not by the mother-in-law. There is no specific instance of cruelty or harassment given by any of the prosecution witness on the part of her mother-in-law. Such a stringent punishment, as provided in Section 304-B of the Indian Penal Code, could not be imposed on such like weak accusations and weak type of evidence. From the careful perusal of entire evidence on record, this Court came to the conclusion that the prosecution has failed to prove its case against mother-in-law, namely, Smt. Bimla, beyond reasonable doubt.

Keeping in view the above discussion, this Court is of the view that appellant No.2, namely, Bimla Devi is entitled to be acquitted of the charges framed against her, by way of abundant caution.

Accordingly, the appeal is partly allowed, judgment of conviction and order of sentence qua appellant No.2-Smt. Bimla, is set aside, and she is acquitted of the charge by way of abundant caution. As she is already on bail vide order dated 12.12.2011 of this Court, her bonds are discharged.

However, the case of the prosecution against appellant No.1-Salamudin, for demand of dowry is fully established against him. Accordingly, the judgment of conviction and order of sentence under Section 304-B of Indian Penal Code qua appellant No.1, is

upheld.

Finding no merit in the present appeal filed by the appellant No.1, the husband, Salamudin, the same is hereby dismissed. His bail bonds stands cancelled. He shall surrender to undergo the remaining part of the sentence.

04.02.2015
yakub

(JITENDRA CHAUHAN)
JUDGE