

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Appeal No. S-2806-SB of 2010(O&M)
Date of decision : 24.09.2015

Sonu Pal and others

..... Appellants

versus

State of Haryana

... Respondent

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of the 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: Ms. Sharmila Sharma, Advocate for the appellants

Mr. G.S. Salwara, DAG Haryana

ANITA CHAUDHRY, J.

This appeal has been preferred by the appellants against their conviction and sentence under Sections 304-B and 498-A IPC who have been sentenced to undergo rigorous imprisonment for a period of 10 years under Section 304-B IPC and 3 years rigorous imprisonment under Section 498-A IPC and fine of ₹ 3000/- each. In default of payment of fine they were sentenced to undergo rigorous imprisonment for 6 months. Both the sentences were ordered to run concurrently.

Exposition of essential facts is necessary before referring to the submissions made.

Sonu Pal was married to Kamlesh on 27.02.2009. The unfortunate incident occurred within a year of marriage on 28.01.2010. The dead body of Kamlesh was found on the railway tracks. It was second marriage of Kamlesh. Her first husband had died a year after their marriage. The Station Master Karnal had

informed the police on discovery of a dead body on the tracks. It was Roop Chand and her brother who identified the body.

The complaint was made by Roop Chand. He had disclosed that Kamlesh was earlier married to Gulab about three years ago. After a year of that marriage, the husband committed suicide. The marriage of Kamlesh was performed for the second time in February 2009 with Sonu. The father claimed that he had given sufficient dowry and for the initial 4-5 months his daughter was kept well but thereafter Kamlesh started complaining about the demand of a motorcycle. Fed up with the harassment Kamlesh went to parents house in the first week of December and informed her parents that she was being harassed by Sonu, his parents and brother-in-law who also sided with them. The complainant told the accused that he would take them to Court if she was harassed. After a month Sonu, his uncle and other relatives came to their house and he told them that he would not send Kamlesh back but as an assurance was given and Kamlesh was sent back. A night before the incident Sandeep informed the complainant that Sonu had beaten Kamlesh and his sister had given this information. The family decided to go to Karnal the next day. When they were ready to leave, in-laws informed them that Kamlesh had died. On reaching Karnal they found that the body was lying on the railway track with head severed.

The in-laws later handed over suicide note and pocket diary of the deceased to the police.

Investigations were completed and challan was presented

against the husband and his parents.

The prosecution examined 13 witnesses including the Investigating Officers and the Medical Officers.

The accused denied the allegations and pleaded innocent. They claimed that they had never demanded any dowry nor had harassed or tortured her. In defence they examined two witnesses. The trial Court accepted the statement of Roop Chand and Sandeep and convicted the appellants to the sentence mentioned aforesaid.

Both the sides were heard extensively. The record has been examined.

The submission made on behalf of the appellants was that there was no demand of dowry and it was admitted that the articles given to Kamlesh in her first marriage were given in the second marriage. It was urged that suicide note was found which gave a clean chit to the family. It was urged that no Panchayat was held and there was no demand at the time of marriage and after 4 months there was no reason why they would raise a demand. It was urged that the prosecution had set up a story that a call had been made by Kamlesh to the brother but in the call details there is no phone call on the previous day. It was urged that deceased had suffered an abortion and was under depression and could not come out of it and there is no evidence of cruelty immediately before the incident. It was urged that the deceased used to maintain a diary and the girl was over sensitive and it was in the state of depression that she had ended her life.

Per contra the submission made on behalf of the State was that the death had taken place within a year of marriage and there was no history of depression or that she was taking any medication. It was urged that it has not been proved that Kamlesh was having any phone nor there is any evidence that she had maintained a diary. It was urged that the incident took place on 28.1.2010 whereas the suicide note had been handed over in the month of February 2010 and the trial Court had rejected the evidence.

It would also be necessary to notice the provisions.

Section 304-B of the Indian Penal Code reads as under:-

"304B. Dowry death.-(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 sub-section, "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."

A legal fiction has been created in the said provision to the effect that in the event it is established that soon before the death, the deceased was subjected to cruelty or harassment by her

husband or any of his relative; for or in connection with any demand of dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death. The Parliament has also inserted Section 113 B of the Indian Evidence Act which reads as under :-

"113.B- Presumption as to dowry death.- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.- For the purposes of this section, "dowry death", shall have the same meaning as in section 304-B of the Indian Penal Code (45 of 1860)."

From a conjoint reading of Section 304-B of the Indian Penal Code and Section 113-B of the Indian Evidence Act, it will be apparent that a presumption arising thereunder will operate if the prosecution is able to establish the circumstances as set out in Section 304-B of the Indian Penal Code.

The ingredients of the aforementioned provisions are :

(1) That the death of the woman caused by any burns or bodily injury or in some circumstances which is not normal; (2) Such death occurs within 7 years from the date of her marriage (3) That the victim was subjected or cruelty or harassment by her husband or any relative of her husband; (4) Such cruelty or harassment should be for or in connection with demand of dowry; and (5) is established that such cruelty and harassment was made soon before her death.

The prosecution was thus obliged to prove that the case fell within the parameters laid out to attract the provisions of Section 304-B IPC.

On examination of the evidence, it is found that all the witnesses have spoken about the demand and the harassment the girl was facing in her life. It is not disputed that it was her second marriage. Her first husband had died within a year of their marriage. The defence projected a case that it was a case of suicide and the girl was maintaining a diary. The suicide note and the diary were handed over to the police 19 days after the occurrence. The police did send the suicide note and diary for comparison. A report did come that the handwriting in the diary and suicide note were of the same person. This evidence was laid before the Court by the defence. The prosecution refused to rely upon the material and rightly so as there was no material to show that the writing contained in the diary and the letter was that of the deceased. Had it be a case that the diary and the suicide note were discovered on same day, the benefit could have been extended to the accused.

Section 113-A of the Evidence Act presumes the guilt of the husband and members of his family. Significantly Section 113-B of the Evidence Act pointedly refers to dowry death and the Parliament has again employed the word "presumption" and when the death takes place within seven years of the marriage there is a presumption against the accused. Positive evidence has been led by the prosecution that the girl was being harassed. The incident took place on 28.01.2010.

The girl had been married only for about 11 months. The girl had

visited her family in December. She remained there for a number of days before she was taken back. A defence was taken that the girl was not able to come out of depression as she had undergone an abortion but there is no evidence that she was suffering from depression. No record was produced to show that she was being treated. The defence had brought on record the call details and the case set up was that the deceased was having a mobile. They had also summoned the call details of the mobile used by her brother. The argument raised was that no call was made on the previous day. Sandeep PW-13 had admitted that he had a mobile. The defence, however, did not put any question to him with respect to the mobile being used by the deceased. The fact that Kamlesh had committed suicide on account of depression or on account of forced abortion of her child is too far fetched. Kamlesh had been living with her parents for about 2 years before her second marriage took place. The time gap between the loss of child and the suicide was sufficiently long. The trial Court had thoroughly examined the evidence and had noted that the death occurred within a year of the marriage and the girl had complained to her family and there was a proximate link and the case passed the proximity test.

The body was discovered by the railway employees. The family even did not know when the girl had left the house. The body was discovered at about 6.30 a.m. The girl would not have ended her life in this way unless there were circumstances which forced her to take the extreme step. There is perceptible nexus between her death and the dowry harassment inflicted on her.

Having regard to the entirety of the material, I find no ground to interfere with the findings recorded by the Court below and it

is held that the accused had failed to establish their defence. There is no tangible circumstance to rebut the presumption. The conviction recorded by the trial Court is upheld.

The Hon'ble Supreme Court in *Hem Chand vs. State of Haryana IV (1994) CCR 814 (SC)* had observed that when a dowry death takes place in a matrimonial home, while awarding punishment, the Court should take notice of the fact that Section 304-B IPC only raises a presumption and law lays down minimum sentence of 7 years which may be extended to imprisonment for life. The Hon'ble Supreme Court held that awarding extreme punishment of imprisonment for life should be in rare cases and not in other cases. In my view ends of justice would be met if the sentence of the appellant namely Sonu Pal is reduced to 8 years and that of Som Pal and Phoolpati to 7 years under Section 304-B IPC. There will be no change in the sentence awarded under Section 498-A IPC nor in the fine imposed under both the Sections.

The appeal is dismissed with the above modification in the sentence.

The appellants are presently on bail. They would surrender within 20 days before CJM Karnal to undergo the remaining part of the sentence. Copy of the order be sent to the Court concerned. In case the appellants fail to surrender, CJM Karnal would initiate proceedings for their arrest.

September 24, 2015

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**(ANITA CHAUDHRY)
JUDGE**