

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA No. S-3735-SB of 2014 (O&M)

Date of decision : 01.07.2015

Pardeep Kumar

.....Appellant

Versus

State of Haryana

....Respondent

**CORAM:- HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. A.D.S. Jattana, Advocate
for the appellant.

Mr. Vishal Garg, Additional AG, Haryana.

Mr. Sandeep S. Majithia, Advocate
for the complainant.

LISA GILL, J.

This judgment shall dispose of two appeals i.e. CRA S-No.3735-SB of 2014 (Pardeep Kumar versus State of Haryana) and CRM A-No. 194-MA of 2015 (State of Haryana versus Prem Kumar and another) arising out of a common judgment dated 19.08.2014.

CRA S-No.3735-SB of 2014 has been preferred by Pardeep Kumar son of Prem Kumar impugning the judgment dated 19.08.2014 and order dated 21.08.2014 respectively passed by the learned Additional Sessions Judge, Karnal whereby the appellant has been convicted for the offence punishable under Section 304B IPC and sentenced to undergo rigorous imprisonment for a period of eight years besides to pay a fine of ₹10,000/- and in default thereof to undergo rigorous imprisonment for six months.

State of Haryana has preferred CRM A-No. 194-MA of 2015 against the acquittal of Prem Kumar son of Nanha Ram and Urmila wife of Prem Kumar i.e. father-in-law and mother-in-law of the deceased Swati.

The facts are being taken from CRA S-No. 3735-SB of 2014.

FIR No. 109 dated 15.05.2012 (Ex. PD) was registered under Section 304B read with Section 34 IPC at Police Station Kunjpura on the basis of statement, Ex.PD, of Mohni Devi wife of Jai Pal, mother of the deceased Swati. Intimation was received by the police regarding Swati wife of Pardeep Kumar being brought dead to the General Hospital, Karnal. On receipt of this information, Manoj Kumar, Inspector/SHO alongwith other police officials reached General Hospital, Karnal. Mohni Devi, PW2, mother of the deceased was found present. She in her statement, Ex. PD, revealed that she was a widow, her husband having died about 12 years prior to the incident. She was a house wife having three children – two boys and one girl. Pardeep Kumar was her eldest son. Sanjeev Kumar and Swati Devi deceased were her younger son and daughter. Swati aged about 25 years was married with Pardeep Kumar son of Prem Kumar, caste Kamboj resident of Mugal Majra on 19.02.2011 as per Hindu rites and rituals. Dowry to her daughter had been given as per her status. However, after some days of the marriage, in-laws of her daughter namely husband Pardeep Kumar son of Prem Kumar, father-in-law Prem Kumar, Mother-in-law Urmila Devi, Jasmer Singh son of Puran Singh maternal uncle of the husband, Rajni Devi sister

of the husband and Bala mother-in-law of Rajni Devi started teasing her daughter for bringing less dowry. This was revealed to her and both her sons Pardeep Kumar and Sanjeev Kumar by her daughter Swati. In-laws of the deceased started demanding a car in dowry. Her daughter came to her being harassed by her in-laws. Jasmer Singh maternal uncle of the deceased's husband, sister Rajni Devi and Bala Devi used to urge Pardeep Kumar to leave her daughter and then they would get him re-married. However, after convening Panchayat and on persuasion of her relatives, complainant sent her daughter Swati back to her matrimonial home at Mugal Majra. A few days passed peacefully but her daughter was again subjected to harassment by her in-laws for the same demand of dowry. Complainant went to Mugal Majra alongwith her son Sanjeev Kumar to make them understand but despite their efforts they did not desist from their actions. On 15.05.2012, complainant received a phone call at her residence at about 5.00 p.m. and her daughter entreated that she should be saved as her in-laws were trying to kill her. On this information, she reached Mugal Majra alongwith her son Sanjeev and came to know that on account of demand of dowry, in-laws of her daughter had killed her daughter Swati after giving her poison and then strangulating her with the help of rope. In-laws of her daughter had taken Swati to the hospital. When the complainant reached General Hospital, Karnal alongwith her son, she found her daughter dead. She prayed for action to be taken against all the accused persons.

Inquest proceedings were conducted. Post Mortem

examination of the dead body was carried out by Dr. Sucha Singh alongwith Dr. Ashish Verma and Dr. Prem Lata. Post Mortem Report, EX. PB was submitted wherein opinion regarding the cause of death was not verified as it was to be ascertained only after receiving reports from Forensic Science Laboratory, Madhuban.

On receipt of FSL report, Ex. PC, it was opined by Dr. Sucha Singh, PW1 that the cause of death in this case was asphyxia due to hanging, which was ante mortem in nature and sufficient to cause death in the ordinary course of nature. On 16.05.2012 itself, Incharge of the FSL team alongwith other officials reached the place of occurrence. They took in possession vomit lying on ashes and one scissor Ex. MO3 alongwith two pieces of vest Ex. MO4 and Ex. MO5 from the place of occurrence. It was converted into a separate parcel taken in possession vide recovery memo Ex. PO. Rough site plan Ex. PW8/C of the place of occurrence was prepared.

Three accused persons were arrested on 17.05.2012. Accused Rajni, Bala @ Rajbala and Jasmer were found innocent during investigation. Appellant - Pardeep Kumar suffered a disclosure statement, Ex. PG, regarding the commission of crime and in pursuance to the statement he got recovered a motor cycle bearing No. HR-05AC-3410 Platina make, which had been given in dowry to him as well as Dupatta (scarf) and material which was used in hanging by Swati Devi. The same were converted into a parcel and sealed with seal MK and taken in possession.

Out of six persons accused in the FIR, police during investigation found only three of them guilty and, accordingly, three

accused i.e. the present appellant, his father Prem Kumar and mother Urmila Devi were proceeded against and report under Section 174 Cr.P.C. was presented against the said three accused only. All the accused claimed trial. Prosecution examined nine witnesses to prove its case. Accused while denying incriminating material/evidence put to them in their statements under Section 313 Cr.P.C. pleaded innocence and false implication in this case. Three witnesses were examined in defence.

Learned trial Court on appreciation of evidence on record found that the prosecution had failed to prove its case qua Prem Kumar and Urmila i.e. parents of Pardeep Kumar. However, it was concluded that there is sufficient evidence on record to show the complicity of appellant - Pardeep Kumar, who was, accordingly, convicted and sentenced as noted above. Hence, the present appeals.

Learned counsel for the appellant – Pardeep Kumar submits that conviction of the present appellant is completely illegal and is liable to be set aside. It is argued that the essential ingredients, which constitute an offence punishable under Section 304-B IPC, are not present in this case, which would justify the conviction of the appellant. There is no evidence to show that any specific demand of dowry was ever raised by the appellant and that too soon before the alleged occurrence. It is submitted that infact the deceased had wanted to marry one Sonu, who is the brother of the deceased's Bhabhi (sister-in-law) i.e. Bindu wife of Pardeep Kumar brother of the deceased. As she could not get married to said Sonu,

she was depressed. Furthermore, on three different occasions matrimonial alliance of the deceased could not take place with various persons as they had refused to get married with her. On account of these facts, Swati was under depression and had taken an extreme step of taking her life. The appellant had no role to play in the same.

Learned counsel for the appellant further submits that the conduct of the complainant herself is abnormal and improbable. This is so for the reason that as per her statement, she received a telephone call of which there is otherwise no evidence at about 5.00 p.m. There is no explanation as to why they did not reach village Mugal Majra immediately. Had they come within reasonable time, it is possible that death of Swati could be averted. As per the post mortem report, the time of death was about 9.00 p.m.

Furthermore it is argued that once the trial Court had found two of the accused to be innocent on the basis of the same evidence, there is no justification for convicting the present appellant. Tendency of the complainant to involve number of persons is evident from the fact that at the outset six persons had been named out of whom three were found innocent during investigation and another two have been acquitted by the trial court. In this situation, it is urged that conviction of the appellant, who is also a patient of Tuberculosis, is liable to be set aside.

Per contra, learned counsel for the State submits that the prosecution has adduced sufficient evidence to show the complicity of the appellant in the commission of the heinous crime. He is

instrumental in the death of his wife within approximately one year and four months of their marriage. There is, thus, no ground for setting aside the conviction and sentence imposed upon the appellant.

We have heard learned counsel for the parties and gone through the record.

The essential ingredients, which are necessary for constituting an offence punishable under Section 304-B IPC, are that:

- 1) Death has taken place within seven years.
- 2) Death is unnatural i.e. otherwise than under normal circumstances.
- 3) Deceased was subjected to cruelty or harassment by her husband or his relatives for or in connection with any demand for dowry.
- 4) Such cruelty or harassment was soon before her death.

It is a matter of record that the incident has indeed taken place within a period of seven years of marriage. Marriage between the deceased and the appellant took place on 19.02.2011 and the death took place on 15.05.2012. It is also not in dispute that it is indeed an unnatural death.

There is sufficient evidence on record to show harassment of deceased by the appellant in connection with demand of dowry soon before death of Swati. The complainant Mohni Devi, PW2 as well as PW4 Sanjeev Kumar son of Jai Pal brother of the deceased Swati have consistently stated that the deceased was

subjected to harassment on account of bring insufficient dowry. Therefore, to suggest that there was no demand of dowry is not tenable in the peculiar facts and circumstances of the case. Both the said witnesses have testified that sufficient dowry was given at the time of marriage of the deceased with the appellant on 19.02.2011. List of dowry articles, Ex. PK and Ex. PL have been proved by PW4. This list includes apart from other household items, a motorcycle, refrigerator, LCD television, jewellery and Dish cable.

Argument of learned counsel for the appellant is that giving of the motorcycle at the time of marriage is not proved because the said motorcycle is in the name of the appellant and was actually produced by him. However, there is no evidence on record to sustain such a contention. There is not even a suggestion to PW4 that motorcycle was infact not given at the time of marriage. Demand of dowry specifically demand of car has been consistently revealed by the complainant i.e. mother as well as PW4 brother of the deceased. There is no weight in the argument led by the learned counsel for the appellant that there is no evidence of the said demand having been made soon before the death of Swati. Incident has itself occurred within 1½ years of the marriage. Such a plea is indeed misconceived.

Similarly contention that there is no evidence in respect to any complaint, which may have been made by the complainant side in respect to the demand of dowry, is not made out. It has specifically been stated by Sanjeev Kumar that Panchayat was convened at their house in village Islam Nagar where all the accused persons were

present. It is on assurance of the Panchayat that the deceased was sent back to her matrimonial home. It would indeed be fallacious to say that there can be no reliance on the testimony of the said witnesses for the reason that they had been given the exact date and time of the said Panchayat. It is not necessary that the date and time of each and every such meeting, which would have been convened attempting conciliation between the parties, would be remembered. It is normal and probable that at the first flush there would be an attempt of the girl's side to settle her in her matrimonial home. They would not wish to be instrumental in breaking up the marriage of the girl. Therefore, not lodging a complaint or FIR against the accused cannot be taken to be a circumstance in favour of the accused to indicate that there was no harassment on his part.

Present appellant has in pursuance to his disclosure statement got recovered a motorcycle as well as dupatta/scarf and material used for hanging. He first disclosed that he had concealed the motorcycle and dupatta with which the deceased had hanged herself at the house of his aunt/bua namely Premo Devi in village Barsana. As he was being taken to his aunt's house at village Newal the appellant retracted his earlier statement claiming it to be incorrect. He thereafter disclosed that he had infact concealed the said articles in the cattle shed near his house. Said articles were recovered from the cattle shed from his house on the basis of his subsequent disclosure.

Once the basic ingredients of Section 304-B IPC are proved by the prosecution, presumption under the law regarding

culpability of the accused arises. It is indeed a rebuttable presumption but in the present case the appellant has been unable to rebut the same. A futile effort has been made to raise a bogey of the affections of the deceased lying elsewhere. Apart from the suggestions put to PW2 and PW4, there is no such evidence on record. No such stand has been taken by the accused. There is no evidence regarding other failed matrimonial alliances in respect to other persons who had refused matrimonial alliance with the deceased. It is an absolutely vague plea sought to be raised as an afterthought. It is further in contradiction to another suggestion to the witnesses namely that the deceased had suffered a miscarriage and she was depressed on that account. By taking the said contradictory stands defence version is far from fortified.

Similarly, evidence of DW1 and DW2 is of no avail to the defence. Their bald statements in the absence of any evidence on record cannot be relied upon. Both these witnesses i.e. DW1, Mittar Sain and DW2 Des Raj have, however, fortified the fact that the appellant - Pardeep Kumar was living separately from his parents with the deceased since the time of their marriage.

DW3, Sham Singh has deposed that the appellant was posted as an Accountant with M/s Vaibhav Feeds, I.T.I. Chowk, Karnal till 15.05.2012 and he was present on duty on that day. Apart from the fact that in the absence of any documentary evidence to show that the appellant was in fact an employee with the said concern, there is not even a whisper that appellant was working late in the evening. Testimony of DW3, therefore, does not prove that the

appellant was not present at the spot at the relevant time.

Another contention raised by learned counsel for the appellant that in view of acquittal of the other two accused, present appellant is also entitled to acquittal evidence being common to all the accused is not tenable. It is a settled position of law as held by the Hon'ble Supreme Court in **Israr v. State of U.P., 2005(2) RCR (Criminal) 40** that acquittal of one of the co-accused would not lead to rejection of the entire evidence qua the other accused as well. Other accused can be convicted on the basis of the same evidence if found credible qua them.

In the present case, there is sufficient material on record to prove the culpability of the appellant. He has been rightly convicted for the offence punishable under Section 304-B IPC.

At this stage, learned counsel for the appellant submits that as the appellant is suffering from Tuberculosis and is seriously unwell, therefore, sentence of eight years imposed upon him be reduced to the minimum provided under the Act i.e. seven years. We find no ground to reduce the sentence imposed upon the appellant, which in any case is on the lower side.

We find no merit in CRM A-No. 194-MA of 2015 either. Prosecution has indeed failed to prove its case beyond reasonable doubt against the father-in-law Prem Kumar and mother-in-law Urmila, who have rightly been acquitted extending the benefit of doubt. Evidence on record does not unflatteringly point to a demand of dowry by them or any harassment caused by them to Swati who was living with her husband. It is a settled position that there have to

be strong, compelling and substantial reasons to set aside acquittal of the accused. Simply because another view may be possible cannot be a ground for reversing a judgment of acquittal.

Learned counsel for the State is unable to point out any infirmity, perversity or illegality in the impugned judgment, which would warrant interference by this Court.

Consequently, both appeals i.e. CRA S-No.3735-SB of 2014 and CRM A-No. 194-MA of 2015 are dismissed.

(Hemant Gupta)
Judge

(Lisa Gill)
Judge

01.07.2015
rts

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM A-No. 194-MA of 2015 (O&M)

Date of decision : 01.07.2015

State of Haryana

.....Appellant

Versus

Prem Kumar etc.

....Respondents

**CORAM:- HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. Vishal Garg, Additional AG, Haryana.

LISA GILL, J.

For order see **CRA No. S-3735-SB of 2014** titled as
Pardeep Kumar Versus State of Haryana decided vide separate
judgment of even date.

**(Hemant Gupta)
Judge**

**(Lisa Gill)
Judge**

01.07.2015
rts