

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

**CRA-S-389-SB of 2014 (O&M)**

**Date of decision: 01.07.2015**

**Suresh Kumar**

**..... Appellant**

**Versus**

**State of Punjab**

**..... Respondent**

**CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH**

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: Mr. Mohd. Yousaf, Advocate  
for the appellants.

Mr. Gurveer Sidhu, AAG, Punjab.

**R.P. NAGRATH, J.**

The appellant faced trial of the charge under Section 304-B of Indian Penal Code (IPC) and in the alternative Section 306 IPC, alongwith his father Lachhman Prajapati. Learned trial Court granted the benefit of doubt to father of the appellant and acquitted him of the charges framed against him. The appellant was, however, convicted of the charge under Section 304-B IPC and awarded him the sentence to undergo rigorous imprisonment for seven years. As per custody certificate placed on record by learned State counsel, the appellant has undergone more than 3 years and 6 months of imprisonment.

2. Lachhmi daughter of the complainant was about 20 years old at the time of her marriage with appellant. The marriage was solemnized on 29.05.2011. The appellant is native of village Sohna, Police Station Wazirganj, District Gonda, Utter Pradesh and

they were presently settled in Muslim Colony, Sherpur Kalan, Ludhiana. The parents of the girl are residents of Amritsar.

3. The prosecution version, briefly, stated is that father of the girl had given dowry articles in the marriage according to his capacity but the appellant and in-laws of the girl were harassing the deceased to force her to bring more dowry. 4 or 5 days before the incident, the deceased had made a phone call to her father asking him to take her away from the matrimonial home otherwise she would be killed by her in-laws. The complainant could not go to his daughter's house that day because he was suffering from typhoid. The complainant, however, sent a message to his daughter through son of his brother-in-law, namely; Dharminder, who also resides at Ludhiana, that he would be coming to Ludhiana on 06.01.2012 to take the deceased with him and take her away.

4. However, at about 01.15 p.m. on 25.12.2011, father of the appellant made a phone call to the complainant that his daughter has committed suicide by hanging. Dharminder aforesaid was informed who immediately went to the house of deceased and found dead body of the deceased hanging with ceiling fan. The complainant immediately proceeded to Ludhiana alongwith relatives. It was stated that the girl has committed suicide because of cruelty committed on her for being harassed on account of demand of dowry. It was further stated that the appellant and his family members had been quarreling with the deceased.

5. A wireless message was received at police station from control room about a girl committing suicide by hanging. PW-4 ASI Tarsem Singh reached the spot where Dharminder aforesaid was

present. No one from the family members of appellant was present in the house at that time. The photographer was called to take photographs of the scene of occurrence. The dead body was sent to the civil hospital for postmortem examination. Thereafter, father of the girl reached there and his statement Ex. PB was recorded at 07.30 p.m. on the same day on the basis of which FIR Ex. PB/3 was registered.

6. The case was committed to Sessions Court for trial. The prosecution examined six witnesses in support of its case.

7. During his examination under Section 313 Cr.P.C., appellant denied all the incriminating circumstances appearing against him in the prosecution evidence. He pleaded that just about 20-21 days of marriage on 19.06.2011, he had fallen from a running train and received serious injuries. He remained bedridden for about 2-3 months. On this account he was unable to perform matrimonial obligations. His wife was not happy with the marriage as the appellant was not to her liking and that the complainant had fixed the marriage without her consent. The marriage is stated to be a simple affair.

8. In defence DW-1, Sunil Kumar, Senior Clerk-cum-Computer Operator from the hospital was examined to bring on record the circumstance that father of the appellant i.e. co-accused (since acquitted) was admitted for heart treatment in DMC Heart Institute on 19.09.2011 and he was operated upon on 28.09.2011. The patient was discharged on 04.10.2011. The defence evidence was relating to co-accused Lachhman Prajapati who stands acquitted by the trial Court.

9. I have heard learned counsel for the appellant, the State counsel and perused the record quite extensively with their able assistance.

10. Learned counsel for the appellant has challenged the conviction of the appellant on the grounds *inter alia*:-

- (i) That there is no evidence worthwhile in proof of the harassment for demand of dowry;
- (ii) that the witnesses to prove the charge are interested persons and no independent witness has been produced nor cited;
- (iii) that the deceased was under acute depression because of ailment of the appellant for quite a long time due to accidental injuries which led her to commit suicide; and
- (iv) that at the most the case can be said to be attracting Section 306 IPC and not Section 304-B IPC.

11. Per contra learned State counsel has supported the conclusions reached by the trial Court mainly by contending that there is absolutely no reason for the complainant and other eye-witnesses to falsely involve the appellant for such a heinous offence.

12. For bringing home the charge under Section 304-B IPC, the prosecution is required to prove:-

- (a) that the death of a woman is caused by any burns or bodily injuries or occurs otherwise than under normal circumstances;
- (b) within seven years of her marriage;

(c) it must be shown that soon before the death the girl was subjected to cruelty by her husband or any relative of the husband in connection with the demand of dowry.

13. It is admitted in the instant case that the marriage was solemnized on 19.05.2011 and that the married girl died of hanging which is indisputably otherwise than under normal circumstances.

14. In **Raja Lal Singh vs. State of Jharkhand AIR 2007 SC 2154**, the married girl died about 7 months of the marriage. There was evidence of the victim being harassed on account of demand of dowry. In that case also the victim had committed suicide. The Hon'ble Supreme Court held that even if the married girl commits suicide, Section 304-B IPC can still be attracted. It was observed that if a person commits suicide, it was obviously because she was extremely unhappy, and unless the husband gives a satisfactory alternative explanation for the suicide, it was concluded that the persistent demand of dowry had led to her suicide.

15. On proof of the aforesaid facts, there is a presumption in terms of Section 113-B of the Indian Evidence Act, 1872. Section 113-B of the Indian Evidence Act 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 has 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.”***

16. The instant is quite a shocking incident in which the married girl has died under mysterious circumstances just within 7 months of marriage.

17. PW-2 the complainant stated that 15 days after the marriage, mother-in-law of his daughter started complaining that the marriage was not performed as per their expectations. The appellant started demanding motorcycle from his daughter and had put a condition that until this demand is met he would never visit in-laws house. He never visited the house of PW-2 after the marriage. The mother of appellant was also demanding ₹ 40,000/- to ₹ 50,000/- to meet her expectations of ornaments.

18. PW-2 further stated that on the occasion of *Rakshabandhan* (which is normally in the month of August of the year), the deceased was sent to her parents' house. The appellant and his family members never came to take the deceased back. However, a *panchayat* was convened and the girl was rehabilitated to her matrimonial home. After rehabilitation of the deceased, the appellant and his mother started demanding ₹ 2 lacs from the deceased so that the appellant could start business as his final examinations were over.

19. All the above facts in detail were not mentioned in FIR recorded by the complainant and PW-2 was confronted with the contents of his statement Ex. PB but that is apparently because of the insensitive attitude of the police in recording the detailed information of the facts. There was, however, a definite stand of the complainant in the FIR about the girl being constantly harassed for pressurizing her to bring more dowry. PW-2 has reiterated the fact

that prior to 25.12.2011 he received a phone call from the deceased that she was being maltreated by the appellant and his parents and she was apprehending that she may be killed. He has further stated about his ailment to be the reason that he could not immediately go to Ludhiana from Amritsar but sent Dharminder to console his daughter to assure her that the complainant would come on 06.01.2012 to bring his daughter.

20. The complainant further stated that on 25.12.2011, he received a phone call from father of the appellant that Lachhmi has hanged herself.

21. The basic question would be whether father of the girl can be disbelieved in his version of maltreatment of the girl for meeting the demand of more dowry articles ? The answer is clear no. The phone call was made to the complainant by father of the appellant at 01.15 p.m. and the complainant reached all the way from Amritsar to Ludhiana and his statement Ex. PB was recorded at 07.30 p.m. containing all these allegations of harassment on account of not bringing more dowry. The FIR Ex. PB/3 was delivered to the Magistrate in the midnight at 12.10 a.m. i.e. within few hours. In the absence of any material appearing in cross-examination of PW-2 for attacking the story of demand of dowry, PW-2 cannot be disbelieved on the above version recorded by him instantly on reaching Ludhiana and promptly delivered to the Magistrate.

22. Learned counsel for the appellant referred to cross-examination of PW-2 that the couple had gone to native village in District Gonda, Uttar Pradesh soon after the marriage and stayed

there for 20 to 30 days. It is admitted by PW-2 that while on return the appellant had a fall from a running train and remained admitted in the hospital in District Muradabad. The appellant is taking advantage of that incident to contend that he remained quite unwell for about 2 to 3 months because of the accident and was unable to fulfill matrimonial obligations which frustrated the deceased, who went into depression. It is not possible to accept the above contention and if that be the situation, there is no question of the complainant propounding the story of the deceased being harassed on account of bringing insufficient dowry. PW-2 stated that the appellant had fallen from the running train and he had gone to Muradabad to meet him. The appellant returned from there after 2 or 3 days only. There is no evidence worthwhile or record of any hospital for suggesting that the appellant remained bedridden because of the accident for 2 to 3 months. Simple suggestion put to PW-2 in this regard carries no value.

23. PW-3 Dharminder, who is son of brother-in-law of the complainant, has also stated that the deceased was being maltreated by the appellant and his parents on account of not bringing sufficient dowry. After the marriage, deceased had gone to her parents' house on *Rakshabandhan* but the appellant did not come to take her back for about 2 months. He further stated that after two months the matter was patched up and sister of the appellant and two other boys took the deceased back to the matrimonial home.

24. Learned counsel for the appellant, vehemently, contended that if sister of the complainant had gone to fetch the girl

from her parents' house that would be a conduct which would rule out any kind of cruelty meted out to the girl on account of bringing insufficient dowry. I am, however, of the view that since the girl remained for two months at her parents' house soon after the marriage, it was definitely and clearly on account of the girl being harassed by the appellant and his parents. The girl who lived for 20 years with her father before her marriage and was hale and hearty how could she end her life without being constantly harassed for not meeting the demand of dowry.

25. Learned counsel for the appellant submitted that no complaint for demand of dowry or harassment of the girl was ever lodged with the police. I find that it is not expected from family of the girl or the girl herself to file such a complaint, as endeavour in our society is always to ensure a happy married life. Parents of the girl would try not to disturb the matrimonial life of the girl by making such a complaint with the police. Otherwise, a girl cannot happily stay any longer at her matrimonial home.

26. The fact that the residents of locality where the appellant was residing nor any neighbour of the complainant at Amritsar has been examined to prove this fact, is not quite significant in view of the overwhelming evidence led by prosecution in the statements of PW-2 and PW-3. There is absolutely no reason why these witnesses would make false allegations against the appellant to implicate him for such a heinous crime.

27. The other important factor is that when the complainant reached after a few hours, the appellant and his family members were not present in the house. This is a strange and unbecoming

conduct. According to the prosecution story and testified by PW-2, telephonic message was given by father of the appellant about this untowards incident but they were not available in the house at the time of arrival of relatives, which could not be possibly explained.

28. PW-4 ASI Tarsem Singh, the investigating officer stated that father of the girl reached the house at about 06.00 p.m. Dharminder was present at the spot who told that parents of the girl are coming from Amritsar. So there was absolutely no force in the suggestion put to PW-2 that he had received the telephonic call from the accused immediately in the morning or that he reached Ludhiana at about 01.00 p.m. PW-2 rather reiterated that he received the phone call at 01.25 p.m. as was the version given to the police.

29. PW-3 Dharminder stated that when he reached the house of the appellant on 25.12.2014, he found many people having gathered there and was informed that Lachhmi has hanged herself. He saw the dead body of Lachhmi hanging with the ceiling fan. The dead body was held by PW-3 and the appellant cut *chunni* with a knife. However, when PW-2 reached house of the appellant, the appellant and his parents were not present.

30. Learned counsel for the appellant, vehemently, contended that witnesses to prove the offence are the family members and relatives of deceased and therefore, they are interested witnesses.

31. I am of the considered view that when statement of the witnesses who are relatives is credible, reliable and trustworthy, there would hardly be any reason for the Court to reject such

evidence merely on the ground that witnesses were family members and interested witnesses.

32. In **Namdeo vs. State of Maharashtra, 2007 Crl. L.J. 1819**, Hon'ble Supreme Court held that a close relative cannot be characterized as an 'interested' witness. He is a natural witness. His evidence must be scrutinized carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject the evidence.

33. PW-1 Dr. Anil Verma conducted autopsy on the dead body of girl and as per his report Ex. PA, there was ligature mark V shaped obliquely placed measuring 9½ inch x 1 inch above thyroid cartilage going upward passing underneath right pinna. It was continuous all around except left pinna in an area of 1 ½ inch. The cause of death was asphyxia which was sufficient to cause death in ordinary course of nature. The ligature mark was anti-mortem. The copy of postmortem report is Ex. PA/1.

34. From the above discussion, I find that learned trial Court has quite correctly analyzed the evidence for holding that all the essential ingredients of the offence under Section 304-B IPC are made out. With regard to quantum of sentence, I find that learned trial Court has rather taken a lenient view and imposed only the minimum sentence provided for the offence despite the fact that a newly married girl died just within 7 months of marriage.

35. No merit in the instant appeal and the same is dismissed.

**July 01, 2015**  
*jk*

**( R.P. NAGRATH )**  
**JUDGE**