

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

Crl. Appeal No.S-1693-SB of 2003

Date of Decision: 02.02.2015

Krishan Kumar

....Appellant

Versus

State of Haryana

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ?**
- 2. To be referred to reporters or not ?**
- 3. Whether the judgment should be reported in the Digest ?**

Present:- Mr. K.D.S. Hooda, Advocate
for the appellant.

Mr. Munish Sharma, A.A.G., Haryana
for the respondent-State.

DAYA CHAUDHARY, J.

The present appeal has been filed by accused-appellant Krishan Kumar @ Hari Kishan, who has been convicted for offences punishable under Sections 498-A/304-B IPC, in case, FIR No.146 dated 24.06.2002 registered at Police Station Sadar Hansi, vide judgment dated 16/20.08.2003 passed by the Additional Sessions Judge, Hisar.

The accused-appellant has been convicted for the said offences and was sentenced to undergo rigorous imprisonment for a period of ten years with fine of ₹ 2,000/- for commission of offence punishable under Section 304-B IPC with default clause and was also sentenced to undergo rigorous imprisonment for a period of one year with fine of ₹ 500/- for offence punishable under Section 498-A IPC with default

clause. However, both the sentences have been ordered to run concurrently.

Briefly, the facts as per prosecution version are that on the basis of statement of complainant-Phool Singh, the FIR was registered. He has stated that his deceased daughter was married to accused-appellant Krishan Kumar six years ago and sufficient dowry was given at the time of marriage. Three children were born out of the said wedlock. She was kept properly for a period of four years after the marriage but subsequently, her husband Krishan Kumar-the present appellant, and his brother-in-law Surender started harassing her and she was turned out of the matrimonial home after giving beatings. A demand of ₹ 20,000/- was made for purchase of scooter and his daughter came to her parental house. An amount of ₹ 10,000/- was paid by the complainant-father to the accused-appellant so that his daughter could settle in her matrimonial home. After some time, again a demand of ₹ 50,000/- was raised and beatings were given to deceased-Nirmala. Daughter of the complainant came to her parental house and disclosed about the demand raised by the accused to the complainant. Complainant and his brother Ram Parshad and brother-in-law of the complainant-Mahabir went to the village of the accused and persuaded them not to harass Nirmala-deceased daughter of the complainant. After giving a sum of ₹ 10,000/-, the daughter of the complainant was left in her matrimonial home. On 23.06.2002, Sube Singh, Secretary of Puti Mangal Khan, who is uncle of accused-Krishan, came to the house of the complainant and informed him that his daughter is serious. Complainant, his brother Ram Parshad, Nephew Ashok and wife of the complainant immediately went to the village of the accused-appellant and found that the daughter of the complainant was lying dead on the floor.

There was ligature mark around her neck and thereafter, certain enquiries

were made by them at their own level. However, it was suspected that his daughter has been murdered by accused-appellant Krishan and his brother-in-law Surrender by strangulation.

After registration of FIR and on completion of necessary formalities, the challan was presented against both the accused and they were charge sheeted for offences punishable under Sections 304-B, 498-A and 306 IPC.

To substantiate its case, the prosecution has examined as many as six witnesses.

On closure of prosecution evidence, statements of accused as envisaged under Section 313 Cr.P.C were recorded, wherein, they claimed themselves innocent and pleaded false implication. The accused, in their defence, examined Giani Ram as DW1 and Padam Singh as DW2.

On appreciation of evidence and after hearing both the parties, accused-Surrender was acquitted of the charge by the trial Court and accused-Krishan was held liable for commission of offence under Sections 304-B and 498-A IPC and was sentenced to undergo rigorous imprisonment as mentioned hereinabove.

Learned counsel for the appellant submits that this case has solely been based on the statement of the complainant, which is also not trustworthy. He further submits that not only material contradictions and discrepancies are there in the statements of prosecution witnesses but their testimony is contrary to evidence on record. As per the case of the prosecution, neither there was any demand of dowry nor harassment for a period of four years after marriage. A demand of ₹ 20,000/- was raised for the first time after four years of the marriage and second demand has been alleged to be raised just one month prior to death of the deceased. Neither any specific date, month or year has been mentioned nor the same finds

corroboration from the statement of the complainant. Learned counsel also submits that the allegations of giving ₹ 10,000/- on two separate occasions are there but the person, from whom the said amount was received as loan, was not examined. The prosecution has miserably failed to substantiate the allegations of cruelty and harassment for demand of dowry. The presumption of Section 113-B of the Indian Evidence Act, 1872 is not attracted as mandatory provisions of Section 176 Cr.P.C have not been complied with. Learned counsel also submits that the complainant was present at the time of cremation of his daughter but no complaint was made at that time. No one from the village of the accused has been cited as an independent witness although, the incident was witnessed by so many persons. As per statement of the complainant, he was not present at the time of occurrence and only on the basis of hear-say evidence, the FIR was registered. The complainant was accompanied by PW-5 Ashok, cousin of the deceased when they went to the village of the accused prior to the date of occurrence but he has admitted in cross-examination that he visited that village only after the death of the deceased. Learned counsel also submits that on the same set of allegations, co-accused of the appellant has been acquitted but the present appellant has been convicted. He also submits that maximum punishment has been awarded by the trial Court and the appellant has undergone actual sentence of more than three years and is facing the agony of trial since registration of FIR i.e 24.06.2002.

Learned counsel for the respondent-State submits that the judgment of the trial Court is well reasoned and based on proper appreciation of evidence on record. Even after cross-examining the complainant, in detail, his statement has not been shattered.

Heard the arguments of learned counsel for the parties and have also perused the evidence on record of the trial Court.

The judgment of conviction and order of sentence has been challenged mainly on the ground that the story of the prosecution appears to be doubtful as serious contradictions and discrepancies are there in the statements of witnesses. There was no allegation of harassment or demand of dowry for a period of four years after marriage and thereafter, on two occasions, the demand of dowry was made and harassment thereof was caused to the deceased but no specific date, month and year has been mentioned. It is also the argument of learned counsel for the appellant that the complainant was present at the time of cremation of his daughter but he was not having any complaint about his daughter's death at that time and the FIR was registered later on after due deliberation.

On perusal of statement of PW-1 Dr. M.L. Kamra, it appears that the cause of death of Nirmala was due to *asphyxia* caused by hanging which was *ante mortem* in nature and was sufficient to cause death in the normal course of nature.

As per statement of the complainant, his daughter was killed after being strangled by the accused.

To establish the offence under Section 304-B IPC, it is to be seen as to whether the death of a woman is caused within a period of seven years of marriage and deceased was harassed and was subjected to cruelty by her husband or his other relatives soon before the death.

Section 304-B of the Indian Penal Code is reproduced here-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.]”

Section 113-B of the Indian Evidence Act, 1872 is also relevant for resolving the controversy, in hand. In case, the ingredients of Section 304-B of the Indian Penal Code are established by the prosecution then presumption under Section 113-B of the Indian Evidence Act, 1872 would operate and onus to rebut the presumption shifts on the accused. Section 113-B of the Indian Evidence Act, 1872 is reproduced 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.”

In the present case, it is not disputed that the death of deceased-Nirmala has occurred within a period of seven years of marriage and it was not under normal circumstances. Now, it is to be seen from the evidence on record as to whether the death was result of cruelty and harassment due to demand of dowry as has been alleged by the complainant in his statement. The prosecution has examined complainant-Phool Singh as PW-4, who is father of the deceased and PW-5 Ashok, the cousin of deceased-Nirmala. Complainant has reiterated the allegations levelled in the FIR and in his statement also while appearing before the

Court.

Ashok Kumar, while appearing as PW-5 before the trial Court, has stated in his statement that four years after the marriage, there was no demand of dowry. Subsequently, the deceased was turned out from her matrimonial home by the accused and demand of dowry was made. In cross-examination, PW-5 Ashok Kumar has admitted that he visited the village of the accused only once and that too after the occurrence, whereas, as per statement of the complainant, he, his brother-Ram Parshad, nephew-Ashok took Nirmala to Village Putti Mangal Khan when she came to her parental home after being harassed by the accused persons. As per statement of the complainant, all the three were present there even on the date of occurrence. In cross-examination, a suggestion was put to the complainant as to whether he was having any list of dowry articles, which was handed over to the police but he denied. He also stated that he cannot tell the date, month and year when Nirmala was turned out of her matrimonial home on account of demand of dowry after giving beatings. He has also stated that he did not get Nirmala medico legally examined and no such application was moved to the police regarding such incident. He has also stated that he borrowed a sum of ₹ 10,000/- from commission agent but no entry was made. He has further stated that at that time, proceedings were conducted by the police after seeing the dead body in his presence but signature of any person was not obtained. It has also been stated that some villagers were present at the spot but their statements were not recorded by the police. He has stated that he cannot say as to whose statements were recorded by the police at the spot and mentioned that his signatures were not obtained by the police on the spot. He has stated in cross-examination that cremation was done at Village Putti Mangal Khan in his presence and number of villagers were there

including he himself, his wife, his brother and nephew Ashok.

On perusal of statement of PW-5-Ashok Kumar, it is evident that he went to Village Putti Mangal Khan along with his father Ram Parshad, uncle-Phool Singh, Rama Devi-mother of the deceased and saw that the deceased-Nirmala was lying dead on the floor.

Sub Inspector-Ishwar Singh, while appearing as PW6, has stated in his statement that he has recorded the statements of 5/7 persons at the spot including the statements of Ashok, Ram Parshad and Mahabir. He has also stated that statements of Ram Parshad and Rama Devi were not recorded. He tried to enquire from persons of neighbourhood but they had refused. However, he has not mentioned the names of the villagers who had refused to record their statements.

As per the statement of the accused recorded under Section 313 Cr.P.C, he has falsely been implicated in the case. He has stated that deceased-Nirmala was having illicit relations with one Dalbir-husband of her elder sister. He further submitted that both of them were seen in a compromising position, due to which, they were snubbed by the villagers. She was told that her father would be called on the next day and because of that reason, she committed suicide.

In his defence, the accused examined Giani Ram as DW-1, who has stated that he saw Dalbir at about 12.00 p.m/1.00 a.m in the house of accused but he denied regarding name of father of Dalbir.

On perusal of statements of prosecution as well as defence witnesses and also the provisions of Sections 304-B IPC and 113-B of the Indian Evidence Act, it is to be seen as to whether three conditions, a precedent for establishing an offence under Section 304-B IPC is made out or not:

- (i) that a married woman had died otherwise than under normal circumstances.

(ii) such death was within seven years of marriage.

(iii) the prosecution has established that there was cruelty and harassment in connection with demand of dowry soon before her death.”

In the present case, admittedly the death has occurred within seven years of marriage and was also not under normal circumstances. It is to be seen as to whether the cruelty and harassment in connection with demand of dowry soon before death has been established by the prosecution or not. Two incidents are alleged to have occurred, which have been mentioned by the complainant in his statement while lodging of the FIR and also while appearing before the Court. It has been stated by the complainant that for four years, there was no demand of dowry. A demand of ₹ 20,000/- was alleged to be raised by accused Krishan and Surender but neither any date nor month or year has been mentioned. It has been stated that the complainant has paid ₹ 10,000/- and deceased Nirmala was sent back to her matrimonial home. Thereafter, Nirmala was treated properly for some time but one month prior to the date of occurrence, she was turned out of her matrimonial home after giving beatings. A demand of ₹ 50,000/- was made by the accused persons and when she refused, beatings were given to her. Complainant and his brother Ram Parshad and nephew Ashok went to the village of accused and again paid a sum of ₹ 10,000/-. The statement of the complainant has been falsified from the statement of Ashok, who appeared as PW-5 as he has admitted in his cross-examination that he visited that village only once and that was after the death of Nirmala. Not only this contradiction is there in the statements of the complainant and PW-5 Ashok Kumar but it has also been admitted by the complainant and PW-5 Ashok Kumar that they were present at the time of cremation along with mother of the deceased Rama Devi and neither any complaint was made to the police nor any hue and cry was

raised when the dead body was cremated. As per statement of the complainant, the amount was paid on two occasions to the accused to meet out the demand of dowry after borrowing the same from commission agent but that person was also not examined. Nothing has come on record as to whether any villager's statement was recorded regarding happening of this incident or not, whereas, as per defence version, the deceased was seen with her brother-in-law in a compromising position and it has become a talk of the town and because of that reason, she has committed suicide.

On perusal of statements of witnesses, neither the demand of dowry nor any harassment thereof, has been proved but admittedly it is a case of unnatural death. It appears from the evidence available on record that at the most, it can be a case of Section 306 IPC. As far as allegation under Section 498-A IPC is concerned, the prosecution has failed to establish the guilt beyond reasonable doubt as neither the demand of dowry nor any harassment thereof has been proved. The appellant has suffered the agony of trial since the date of lodging of FIR i.e 24.06.2002. He has undergone actual custody of three years. Moreover, keeping in view the interest of three children and by considering the fact that the accused-appellant has not remarried also as has been submitted by learned counsel for the appellant, the conviction of the appellant is upheld but his sentence is reduced to the period already undergone.

The petition is disposed of with the said modification of sentence. However, the fine shall remain same.

02.02.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE