

In the High Court for the States of Punjab and Haryana, at
Chandigarh

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CRA-S- 2222-SB of 2003

Date of decision: 08.07.2015

Subhash son of Ram Chander

..Appellant

Versus

State of Haryana

..Respondent

Coram: **Hon'ble Mr. Justice Mahavir S. Chauhan**

Present: Mr. Rakesh Nehra, Advocate
for the appellant
Mr. Anil Kumar Yadav, Addl. AG, Haryana
for the respondent-State

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Mahavir S. Chauhan, J.

Subhash, the appellant herein, and his parents, namely, Ram Chander (father) and Chand Kaur (mother) were tried under Sections 304-B/34 of Indian Penal Code, 1860 (for short, "IPC") and in the alternative under Sections 302/34, IPC, as also under Sections 498-B read with Section 34, IPC. However, vide judgement of conviction/ order of sentence dated 29.10.2003, Ram Chander and Chand Kaur have been acquitted and the appellant has been convicted and sentenced to rigorous imprisonment for 7 years with

fine amounting to ₹5,000/- and in default of payment of fine to further rigorous imprisonment for 6 months by the Court of learned Additional Sessions Judge (Ad hoc), Jhajjar (for short,"trial Court"). To assail correctness of aforesaid judgment/order dated 29.10.2003 and to seek his acquittal, the appellant has brought this appeal.

Prosecution had approached the learned trial Court on the allegations that the deceased, namely, Meena Devi was married to the appellant about 3 years before the occurrence. In the marriage, dowry was given to the capacity of parents of the deceased. After the marriage for about 1-1/2 years, married life of the deceased went on smoothly. She even gave birth to a baby boy. However, after 1-1/2 years of the marriage, she was harassed and subjected to cruelty by her husband (appellant) and parents-in-law. A demand of scooter, colour television and refrigerator was put forth. The deceased would reveal it to Subhash (PW7) and Ishwar (PW8) besides her mother. Ishwar (PW8) on receipt of information of harassment and cruel treatment being given to the deceased at the hands of the accused accompanied by Ram Kumar (PW9), maternal uncle of the deceased went to her matrimonial home and paid an amount of ₹10,000/- for purchase of refrigerator. This, however, did not change the fate of the deceased. She came to her parental home after a few days and told Subhash (PW7) and other members of her parental family that her husband Subhash (appellant) and parents-in-law were still harassing and beating her to press for satisfaction of their demand of colour television and scooter. Subhash (PW7) went to matrimonial home of the deceased and made entreaties before the accused not to harass her as they,

being poor people, were not in a position to give colour television and scooter. On return to his home, Subhash (PW7) narrated the entire episode before his family, including Ishwar (PW8). On 11.8.2002, on the occasion of festival of Teej, Subhash (PW7) again went to matrimonial home of the deceased to give her customary gifts. Deceased told him that she was hard pressed because the accused were harassing her for demand of a scooter and colour television; her life could be saved only if this demand was met because they were harassing and beating her every day in this respect. On return to his home, Subhash (PW7) revealed all these things before his family. including Ishwar (PW8). On 15.8.2002, at about 10 A.M. Subhash (PW7) received a telephone call that his sister (deceased) had died. Consequently, he, accompanied by his father Ishwar (PW8), mother Parmeshwari, wife Rajwanti and maternal uncle Ram Kumar (PW9) went to village Kulasi at the matrimonial home of the deceased and found that dead body of the deceased was lying on a bed in the chaubara. There was ligature mark on her neck. Suspecting killing of the deceased by her husband, father-in-law and mother-in-law, he set out for the police station leaving Ishwar, Parmeshwari, Rajwanti and Ram Kumar behind to take care of the dead body, however, he came across ASI Shree Niwas (PW 10) at the T-point of village Kulasi and narrated the entire sequence of events before him which was reduced into writing (Exhibit PB) and based thereupon a formal first information report (for short,"FIR"), Exhibit PB/1, was recorded by ASI Kartar Singh (PW3).

The Investigating Officer visited the spot of occurrence,

prepared inquest report (Exhibit PG), drew visual site plan (Exhibit PH) of the place of occurrence, got the dead body of the deceased subjected to autopsy by Dr. K.K. Jakhar (PW1) and recorded statements of witnesses. On completion of investigation, a report in terms of Section 173(2) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C.") was prepared and presented before the learned Area Magistrate.

On committal of case to the Court of Session, learned trial Court, after hearing the prosecution and the defence, found grounds to presume commission of an offences punishable under Sections 304-B/34, IPC and in the alternative under Sections 302/34, IPC, as also under Sections 498-B read with Section 34, IPC, by the accused and charged them accordingly. Accused pleaded not guilty to the charge and claimed to be tried.

During the course of trial, Dr. K.K. Jakhar (PW1) proved on record post mortem report (Exhibit PA) and also revealed that cause of death of the deceased was strangulation which was ante-mortem in nature and sufficient to cause death in ordinary course of life. Subhash (PW7) reiterated on oath the entire prosecution story, i.e., to say that the deceased was married to the appellant about 3 years before the occurrence, was subjected to harassment and cruelty by the accused for and in connection with demand of dowry, i.e., a scooter, a colour television and refrigerator and that on one occasion, an amount of ₹10,000/- was paid for purchase of refrigerator but inspite of that, circumstances for the deceased did not improve and the accused still continued harassing and beating her for and in connection with demand of dowry and that on

11.8.2002 when he went to house of the deceased, she told him that the accused would not allow her to live and were harassing and beating her every day as their demand for a scooter and colour television was not met. He also deposed to say that on 15.8.2002, he received information that the deceased had died. He has also brought on record his statement (Exhibit PB). Ishwar (PW8) and Ram Kumar (PW9) supported deposition of Subhash (PW7). Inspector Bhim Singh (PW2), ASI Kartar Singh (PW3), EHC Dharampal (PW4), Draftsman Constable Jai Chand (PW5), Constable Rajbir (PW6), ASI Shree Niwas (PW10) and Gulab Singh (PW11) deposed with regard to various facets and phases of investigation.

When confronted with the incriminating circumstances brought on record by the prosecution as required by Section 313, Cr.P.C., the accused denied the same and while reiterating plea of their innocence and false implication came out with a plea that accused Ram Chander and Chand Kaur were living separately from the deceased and the appellant, and that the appellant kept the deceased nicely, but the deceased was pressing to settle at Bahadurgarh as all brothers of the appellant were settled. As the appellant was not able to settle at Bahadurgarh, she was annoyed and for that reason ended her life out of frustration.

Accused examined Anita Devi (DW1) to bring on record copy of ration card (Exhibit D1) to show that Ram Chander was living separately from the appellant, Dr. Satish Kumar (DW2) to prove on record certificate (Exhibit D2) and prescription slip (Exhibit D3) to show that Chand Kaur was suffering from Acute Bronchial

Asthma C Angina-Pectoris for about 2 years and Nardev Singh (DW3) to bring on record that on the date of death of the deceased, Ram Chander and Chand Kaur were not present at village Kulasi and instead were present at Bahadurgarh.

On hearing the prosecution and defence, learned trial Court concluded that the prosecution could not prove guilt of accused Ram Chander and Chand Kaur but it was able to establish guilt of the appellant, beyond reasonable doubt, punishable under Section 304-B, IPC, and, accordingly, while acquitting Ram Chander and Chand Kaur, convicted and sentenced the appellant as herein before stated.

I have heard learned counsel for the parties besides examining the record.

Learned counsel for the appellant has argued with force that the prosecution has failed to establish guilt of the appellant, much less beyond reasonable doubt insofar as the three witnesses, namely, Subhash (PW7), Ishwar (PW8) and Ram Kumar (PW9) have contradicted one another as regards the articles statedly demanded by the appellant as also payment of ₹10,000/- to him. To substantiate this contention, learned counsel has pointed out that according to Subhash (PW7), a demand of colour television, scooter and refrigerator was put up by the appellant but according to Ishwar (PW8), a colour television set had already been given to the appellant at the time of the marriage. Similarly, according to Subhash (PW7) and Ram Kumar (PW9), an amount of ₹10,000/- was given by Ishwar (PW8) to the appellant at the latter's house when they visited village Kulasi whereas according to Ishwar (PW8),

the amount of ₹10,000/- was given to the deceased when she visited her parental house. It has also been pointed out on behalf of the appellant that recovery of Dupatta of the deceased at the instance of the appellant has been found to be false by the learned trial Court and this should suffice to conclude that the case of the prosecution is based on falsity. Learned counsel has also submitted that as deposed to by Dr. K.K.Jakhar (PW1), no signs of struggle were found on the dead body of the deceased which rules out participation of the appellant in the circumstances leading to death of the deceased and this circumstance, coupled with other circumstance appearing on record strengthens story of the defence that the deceased was frustrated on account of failure of the appellant to settle her in a city like Bahadurgarh where all brothers of the appellant were settled and committed suicide for that reason. According to learned counsel, the very important and material aspect of an offence punishable under Section 304-B, IPC, i.e., harassment and treatment with cruelty of the deceased for and in connection with demand of dowry is rendered unsubstantiated in view of the contradictory statements made by the witnesses and as such conviction and sentence of the appellant cannot be sustained.

Per contra, learned State counsel has argued with equal vehemence that in the evidence available on record it has been proved that the deceased died an unnatural death within seven years of her marriage and soon before her death, she was subjected to harassment and cruel treatment by the appellant for and in connection with demand of dowry, therefore, the impugned judgment/order cannot be interfered with.

Nothing more has been urged on either side.

Section 304-B IPC makes a dowry death punishable. According to Section 113-B of the Indian Evidence Act, 1872 (for short, "Evidence Act") once the prosecution is able to prove that the deceased died otherwise than in normal circumstances within seven years of her marriage and soon before her death she was subjected to harassment and cruel treatment for or in connection with demand of dowry, the Court has to presume it to be a dowry death. To put it straight, to sustain conviction of the appellant under Section 304-B, IPC, it has to be seen if the evidence available on record is sufficient to reach a conclusion that the deceased died an unnatural death within seven years of her marriage and soon before her death she was subjected to harassment and/or cruelty for or in connection with demand of dowry.

Death of the deceased within seven years of her marriage otherwise than under normal circumstances is not in dispute. Still it may be pointed out that it has come in the statement (Exhibit PB) of the complainant and his deposition as (PW7) that the deceased was married to the appellant about three years before her death. According to this witness, dead body of the deceased was found lying in the house of the appellant when he along with others visited that place on receipt of information of death of the deceased on 15.8.2002. A ligature was seen on the neck of the deceased. Dr. K.K.Jakhar (PW1) who conducted autopsy on the dead body of the deceased has stated on oath that cause of death in this case was asphyxia as a result of strangulation which was ante-mortem in nature and sufficient to cause death in ordinary course of life.

As aforesaid, Subhash (PW7) has brought on record the entire prosecution story which finds support in the depositions of Ishwar (PW8) and Ram Kumar (PW9). These witnesses though have introduced a little variations/contradictions as regards articles of dowry demanded by the appellant and payment of ₹10,000/- by Ishwar (PW8) to the appellant but have been consistent as regards allegation that the appellant has been treating the deceased with cruelty for or in connection with demand of dowry.

What goes to the credit of the witnesses of the prosecution is their candid admission that during the first 1-1/2 years of marriage life of the deceased went on smoothly or say she was not harassed or treated with cruelty by the appellant and/or members of his family. Had they intended false implication of appellant and members of his family it was not difficult for them to state that deceased was treated with cruelty from the very inception of her matrimonial life.

No doubt, learned trial Court has disbelieved story of the prosecution as regards recovery of dupatta at the instance of the appellant but principle of falsus in uno falsus in omni-bus is not applicable to the Indian jurisprudence. That being so, story of the prosecution as a whole cannot be thrown away only because a small part of it is found to be untrue more so, when the witnesses of the prosecution with regard to the allegations of harassment of the deceased have been consistent and their evidence is found to be confidence inspiring.

As aforesaid, only explanation rendered by the appellant with regard to unnatural death of the deceased is that she

committed suicide out of frustration as the appellant could not provide a residence to her at Bahadurgarh. As rightly observed by the learned trial Court, the explanation is far from being satisfactory because it is a matter of record that deceased hailed from a rural back ground and was not exposed to the urban living. Therefore, she cannot be expected to have insisted upon having a residence at Bahadurgarh. Even otherwise, going by the normal human behaviour, a young lady, as the deceased was, would not even think of ending her life for such a trivial matter and there-by leave behind her infant child without there being any body to take care of him.

In view of the above, I do not find any reason to interfere with the impugned judgment of conviction. However, on going through order on quantum of sentence, it is found that the learned trial Court has imposed a fine amounting to ₹5,000/- on the appellant. However, Section 304-B, IPC, does not stipulate a punishment of fine. Consequently, sentence as regards fine and sentence of imprisonment in default are set aside while maintaining the sentence as regards imprisonment for 7 years.

With the above modification in the order on quantum of sentence, the appeal fails and is dismissed.

The appellant is on bail. His bail bonds are cancelled. He shall surrender before the concerned Jail authorities forthwith failing which, he shall be rearrested and committed to custody by the learned Chief Judicial Magistrate, Jhajjar.

July 8,2015
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(MAHAVIR S.CHAUHAN)
JUDGE