

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

Criminal Appeal No.1914-SB of 2003

Date of Decision : 19.08.2015

Rakesh Kumar and another

.....Petitioner

Versus

The State of Haryana

.....Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. R.S. Chahal, Advocate,
for the appellants.

Mr. Arun Luthra, AAG, Haryana.

JITENDRA CHAUHAN, J.

Assailed in the present petition is the judgment of conviction and order of sentence dated 26/27.08.2003 (for short, 'the impugned judgment'), passed by the learned Sessions Judge, Kurukshetra (hereafter referred to as 'the trial Court'), thereby, convicting the accused/appellants under Section 304-B of the Indian Penal Code. Appellant No.1, Rakesh Kumar has been sentenced to undergo rigorous imprisonment for a period of ten years, whereas, appellant No.2, Samjhu Ben has been awarded rigorous imprisonment for a period of seven years.

In brief, the facts of the case, as noticed in para No.2 of

the impugned judgment, are as under:-

“The parties are original residents of Gujarat. However, Rara since deceased and her parental family were residing in Pipli, whereas the accused are residing in Lucknow. Marriage of Tara with accused Rakesh Kumar was solemnized 3-4 months before her death. After marriage Tara resided with her husband and in-laws in Lucknow. Accused Rakesh Kumar left her at her parental home in Pipli on 28.7.2002 saying that she should come back with money, failing which he would divorce her. Earlier also both the accused had been beating Tara and had been demanding money from her. Her parents were poor and could not afford to pay any money. So being harassed and fed up Tara set herself afire on 29.7.2002 at about 9.00 A.M. in her parental home at Pipli. She was rushed to the Nursing Home of Dr. Nagpal at Kurukshetra. Dr. Nagpal sent rukka Ex.PA to the police. Thereupon Babu Ram Head Constable of Police Station Sadar Thanesar came to the said hospital and moved application Exhibit PB on which Dr. Nagpal gave opinion at 10.30 A.M. That Tara was unfit to make statement. Then on 30.7.2002 Babu Ram moved application Exhibit PE before learned Additional Chief

Judicial Magistrate, Kurukshetra for recording statement of Tara who was admitted with burns in hospital of Dr. Nagpal. Accordingly Shri R.K. Sondhi, the then Additional Chief Judicial Magistrate, Kurukshetra, went to the hospital of Dr. Nagpal and vide his order Exhibit PC at 12.35 P.M. asked for opinion of Dr. Nagpal if Tara was fit to make statement or not. Dr. Nagpal gave his opinion Exhibit PC/1 at 12.50 P.M. that she was fit to make statement. Thereafter Shri R.K. Sondhi recorded statement Exhibit PD of Tara narrating the above facts. By the time Shri Sondhi came back to Court, Court time was over. So on 31.7.2002 Babu Ram moved application Exhibit PQ for obtaining copy of aforesaid statement of Tara. Thereupon copy Exhibit PK/1 of the said statement was supplied. Babu Ram Head Constable made his endorsement Exhibit PK/2 on it and sent it to police station Sadar Thanesar, where on its basis F.I.R. Exhibit PK was registered. Babu Ram then went to Nagpal Hosptial and recorded statement Exhibit PO of Rewa, mother of Tara. She also stated that Tara was married 3-4 months earlier with Rakesh Kumar accused and lived with him and his mother at Lucknow during said 3-4 months. Both the accsed used to beat her asking her to

bring money. They asked her to bring Rs.2 lakhs from her parents, failing which she would be divorced. Account Rakesh Kumar left Tara at her parental home on 28.7.2002 saying that if they would pay Rs.2 lakhs, he would take Tara, failing which he would divorce her. Both parents of Tara counselled accused Rakesh Kumar and expressed their inability to pay the amount, but he remained adamant on his demand and went away. On 29.7.2002 Tara being harassed and fed up, poured kerosene on herself while she was alone in the house and set herself on fire. Rewa who had gone to fetch water returned home and seeing Tara on fire made noise. Persons from the locality came and extinguished the fire. Then Tara was got admitted in the hospital of Dr. Nagpal. Similar statement was made by Shanna Ram, father of deceased Tara, on 5.8.2002 to the police after Tara succumbed to her burns on the same day while being shifted from Nagpal hospital to civil hospital. Babu Ram inspected the spot and prepared rough site plan Exhibit PR. Parents of Tara were living in rented house of Parveen Kumar, whose statement Exhibit PM was also recorded. On receiving information of death of Tara on 5.8.2002 Roshan Lal Assistant Sub Inspector went to civil

hospital, Kurukshetra, and prepared inquest report Exhibit PH on her dead body and sent the same for post mortem examination with application Exhibit PG/1. He also recorded statements of Shanna Ram and Babu Lal and added offence under Section 306 of the Indian Penal Code as the case was originally registered under Section 498-A of the Indian Penal Code only. Dr. C.R. Khatri and Dr. Madhu Sharma conducted post mortem examination vide post mortem report Exhibit PG on the deceased on 5.8.2002 itself and found that the skin was burnt over and above navel anteriorly and posteriorly, face, chest and upper limbs. Pus formation was present here and there. Singing of hair was also present anteriorly and posteriorly. Cause of death in their opinion was burns and its sequelae, which were ante mortem in nature and sufficient to cause death in ordinary course of natural events.

On 8.1.2003 Chander Bhan Assistant Sub Inspector went to Lucknow. After taking help of local police Chander Bhan arrested both the accused from their house on 9.1.2003 and produced them before Duty Magistrate, Lucknow, who granted transit remand of both the accused for four days. On 11.1.2003 the accused

were produced before learned Chief Judicial Magistrate, Kurukshetra. Constable Rishi Pal Draftsman prepared scaled site plan Exhibit PJ of the place of occurrence.”

Upon completion of investigation, challan was presented against the accused appellants. The accused appellants were charged under Section 304-B of the Indian Penal Code, to which they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined, the following witnesses:-

PW1, Dr. A.C. Nagpal, deposed that on 29.07.2002 at 9.15 am, Tara was admitted to his hospital with extensive burn injuries in a semi conscious state. Her B.P. And pulse were not recordable. Smell of kerosene was present. On the application, Ex.PB, moved by the police, he gave opinion, Ex.PB/1 at 10.30 A.M. That the patient was unfit to make statement. On 30.07.2002 at 12.15 PM, he again gave opinion Ex.PC/1 on order Ex.PC of ACJM, Kurukshetra, to the effect that the patient was fit to make statement. On conclusion of her statement, Ex.PD, he also gave opinion Ex.PC/2 at 1.15 pm that the patient remained fit during and after making her statement, which was recorded in his presence.

PW2, Shri R.K. Sondhi, testified regarding recording of statement Ex.PD of the victim.

PW3-Dr. C.N. Khatri, stated that he along with Dr. (Mrs) Madhu Sharma, conducted the post mortem examination on the dead body of Tara. They found burns over her body. In their opinion, the cause of death was burns and its sequelae, which were ante mortem in nature and sufficient to cause death in ordinary course of natural events. He proved post mortem report Ex.PG.

PW4-Constable Rish Pal, Draftsman, deposed that he inspected the spot on 16.01.2003 and prepared scaled site plan, Ex.PJ.

PW5-SHO Baljeet Singh, deposed that he prepared report under Section 173 of the Code of Criminal Procedure.

PW6-HC Raj Kumar, stated that he recorded FIR, Ex.PK on receipt of statement Ex.PK/1 with endorsement Ex.PK/2.

PW7-ASI Chander Bhan, stated that he along with other police officials went to Lucknow on 08.01.2003 and after associating with the local police, arrested the accused appellants and produced them before Magistrate at Lucknow and obtained transit remand. They were produced at Kurukshetra before the Magistrate on 11.01.2003.

PW8-Parveen Kumar, is the landlord of deceased's family. He has deposed that Shanna Ram and his family resided as tenant in his house at Pipli. He runs a shop in the same building. Tara used to remain sick and upset before marriage and remained as such even after marriage. She was called to her parental home about two

months before her death as her mother was expecting a child. This witness was declared hostile.

PW9-Rewa, is the mother of the deceased. She was also declared hostile.

PW10-Babu Lal is a relative of the deceased. The stated that he had identified her body.

PW11-ASI Roshan Lal, deposed that on 05.08.2002, he went to hospital on receiving information about the death of Tara. He prepared inquest report Ex.PH and sent the dead body for post-mortem examination. He also recorded the statements of Shanna Rama and Babu Lal. He also deposed that he added offence under Section 306 IPC.

PW12-HC Babu Ram stated that on 29.07.2002, on receiving rukka, Ex.PA, he went to hospital of Dr. Nagpal and made application Exhibit PB on which Dr. Nagpal gave opinion that Tara was unfit to make statement. On 30.07.2002, he moved application, Ex.PE for recording statement of Tara under Section 164 Cr.P.C. And accordingly, Shri R.K. Sondhi, the then ACJM, Kurukshetra, went to Nagpal Hospital and after obtaining doctor's opinion, recorded statement of Tara. Babu Ram asked for copy of statement, but Court time was over. So on 31.07.2002 he made application Exhibit PQ for obtaining copy of statement. On receipt of the copy of statement Ex.PK/1, he made endorsement Ex.PK/2 and sent it to police station

for registration of the case. He also recorded the statement of Rewa Devi, the mother of the deceased, and Parveen Kumar, the landlord. He also proved site plan, Ex.PR.

Shanna Ram, the father of the deceased, died during the pendency of the trial, thus, could not be examined. PW Dr. Madhu Sharma was given up as unnecessary.

Statements of the accused under section 313 Cr.P.C. were recorded while putting all the incriminating circumstances and material evidence against them, to which they denied and pleaded innocence. It was pleaded that the deceased was called by her mother two months before the occurrence. It was also stated that as per their custom, dowry is not given by the bride's family, rather it is given by the bridegroom's family. In defence, the accused/appellants examined Pooja, the younger sister of the deceased, who was married to Roshan Lal, the younger brother of accused, Rakesh Kumar, at the same time, as DW1. She deposed that both the sisters lived in their matrimonial home. The deceased came to her parental home at Pipli about two months before her death as their mother was expecting a child. The accused never demanded any money either from Tara or from her. They all lived together happily. Tara remained ill and under tension even prior to her marriage. She was also got treated by her in-laws but the ailment could not be cured.

After hearing the learned counsel for both the parties and

perusing the material evidence available on record, the learned trial Court convicted and sentenced the accused-appellants, as noticed at the outset of this judgment.

Aggrieved against the judgment of conviction and order of sentence, the appellants preferred this appeal, which was admitted on 16.10.2003, by this Court.

The learned counsel for the appellants submits that in the present case, the ingredients of Section 304-B IPC are missing. There is nothing on record to show that the deceased was subjected to cruelty or harassment soon before her death for demand of dowry. The allegations levelled against the appellants lack specificity. There is nothing on record to prove that the appellants abetted the deceased to commit suicide. It is further stated that the mother of the deceased, Rewa, PW9, has not supported the case of the prosecution. Similarly, PW8, Parveen Kumar, and PW10 Babu Lal, have also supported the defence version. The father of the deceased, could not be examined as he died during the pendency of the trial. The sister of the deceased, Pooja, DW1, who was married to the younger brother of appellant-Rakesh, has categorically stated that both the sisters were happily married and there was no demand of dowry either from the deceased or from her. On the contrary, the deceased was not keeping good health, even before her marriage and for this reason, she committed suicide.

On the other hand, learned State Counsel submitted that the prosecution has been able to successfully establish its case beyond reasonable doubt against the accused-appellants. The dying declaration, Ex.PD, made by the deceased before a judicial officer is sufficient to prove the guilt of the appellants.

I have heard the learned counsels for both the parties and perused the record with their able assistance.

In order to bring home guilt to the accused-appellants, the prosecution was required to prove that the death of deceased occurred in the circumstances other than normal, and she was subjected to cruelty or harassment soon before her death on account of demand of dowry.

Admittedly, the death in the present case has occurred within four-five months of the marriage, and in the circumstances other than normal. Thus, the only point for determination is whether the deceased was subjected to cruelty on account of demand of dowry, soon before her death.

In order to prove its case, the prosecution has relied heavily on the dying declaration of the deceased, Ex.PD, recorded by Shri R.K. Sondhi, the then Additional Chief Judicial Magistrate, Kurukshetra. He also stepped into the witness box to prove the statement Ex.PD, as true and voluntary. Shri R.K. Sondh, PW2, was not cross-examined at all on behalf of the accused. Thus, the fact of

recording of statement of the deceased by this witness is un rebutted. It has also come in evidence that Shri Sondhi had obtained opinion of Dr. Nagpal before and after recording of the statement to the effect that she was fit to make statement. It has also specifically come in the evidence that she remained fit during and after making the statement. The opinion of Dr. A.C. Nagpal is proved on record as Ex.PC/1 and PC/2. He has also testified that during recording the statement, he remained present. Before proceeding further, this Court feels it appropriate to reproduce the material excerpt of the statement, Ex.PD, which reads as under:-

“Stated that my marriage was solemnized 3-4 months ago. I resided with my husband at Lucknow. My husband had left me at Pipli with my parents two days before today and told that I should come with money, otherwise, he would divorce me. On being harassed I set myself afire, because my mother-in-law and my husband used to beat me earlier also and made demand of money. My parents are very poor and so they could not pay anything. I set myself ablaze on being harassed.”

Thus, a perusal of the above statement, Ex.PD, recorded by the Additional Chief Judicial Magistrate, Kurukshetra, on 30.07.2002, clearly shows that the deceased was left at her parental

home by her husband on 28.07.2002. She set herself ablaze on 29.07.2002. The above statement was made on 30.07.2002, whereas, she succumbed to her burn injuries on 05.08.2002.

As against this, the appellants have relied on the testimonies of Rewa, the mother of the deceased who was examined as PW9 and Pooja, the younger sister of the deceased, who was examined by the appellants in defence as DW1. As far as the testimony of DW1, Pooja is concerned, the same does not inspire confidence. She was married in the same family to the younger brother of accused-Rakesh Kumar. Thus, she might be under huge pressure from her husband to save his brother and mother, the accused herein. She had been still living at her matrimonial home. Similarly, the statement of Rewa, the mother of the deceased, also appears to be made under pressure. The death of her husband during the pendency of the trial would have also added an circumstance to conclude that family had come under stress. In her cross-examination, DW1, Pooja has admitted that her parents had effected compromise with the accused.

The appellants have taken a specific stand that the deceased had come to her parental home two months prior to the occurrence as her mother, PW9-Rewa, was expecting a child. However, not even an iota of evidence has been led on record to prove these facts. The fact of pregnancy of Rewa, if proved, could

have corroborated the version of the defence. Similarly, there is nothing on record to prove that she had been staying at her parental home two months before the occurrence. The statements of these witnesses are highly doubtful and therefore, deserve to be discarded.

Despite the fact that the star witnesses have not supported the case of the prosecution and have turned hostile, the statement of the deceased, recorded by a judicial officer, in the presence of a doctor, who has not been alleged to be inimical towards the accused, is sufficient to bring home guilt to the accused. The accused-appellant has failed to rebut the presumption under Section 113-B of the Evidence Act.

However, it is a common finding that in matrimonial disputes between the parties, there is a tendency to rope in the parents-in-law. And they are made to bear the brunt. In *Preeti Gupta & anr. v. State of Jharkhand & anr.* (AIR 2010 SC 3363) it was held by the Apex Court as under:-

"The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while

dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.”

The *sine qua non* for the dispensation of justice in the present case is bringing the guilty to charge and acquitting the non-guilty.

After careful appraisal of the entire evidence on record, I am of the view that appellant No.2 is entitled to be acquitted of the charges framed against her, by way of abundant caution as there is no

cogent evidence against her.

Accordingly, the appeal is partly allowed and judgment of conviction and order of sentence qua appellant No.2, is set aside. She is stated to be on bail. Her bail bonds shall stand discharged.

However appellant No.1 is being held responsible for abetting the suicide of his wife. Accordingly, the judgment of conviction and order of sentence qua appellant No.1, is upheld and appeal qua him is dismissed. He is stated to be on bail. His bail bonds shall stand forfeited. He be taken into custody forthwith, to suffer the remaining part of the sentence.

19.08.2015

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**(JITENDRA CHAUHAN)
JUDGE**

Note: Whether to be referred to reporter ? Yes/No