

Crl. Appeal S No.2212-SB of 2003 (O&M)
with
Crl. Revision No.2221 of 2004 (O&M)

-1-

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

Crl. Appeal S No.2212-SB of 2003 (O&M)
Date of Decision: 24.08.2016

Subhash Chand

...Petitioner

Versus

State of Haryana

...Respondents

with

Crl. Revision No.2221 of 2004 (O&M)

Kanta Devi

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

- 1. Whether Reporters of 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? No

Present: **Mr. Bahadur Singh, Advocate**
 for the appellant.

Mr. Sanjay Kr. Saini, AAG, Haryana.

Mr. J.S. Yadav, Advocate
for the complainant-petitioner.

ANITA CHAUDHRY, J.

1. The appellant and his four family members were tried by the Addl. Sessions Judge, Jhajjar leading to the conviction of only the appellant under Section 304-B IPC. The trial Court convicted and sentenced him to undergo rigorous imprisonment for a period of seven years and to pay fine of Rs.5,000/-. In default of payment of fine, he was to further undergo rigorous imprisonment for a period of 6 months.

2. The revision has been filed by the complainant seeking enhancement of sentence and compensation.

3. Madhu Bala daughter of the complainant was married to Subhash Chand appellant on 25.04.1999. Madhu Bala died an unnatural death in the matrimonial home on 17.12.1999 i.e. 7½ months after her marriage. She was pregnant. She died of 100% burn injuries. The report was lodged by her mother Kanta Devi. The complainant had named the husband, his parents and the other relatives. All of them were challaned and charge was framed under Sections 498-A, 304-B, 34 IPC.

4. The prosecution examined 12 witnesses. Kanta Devi in her deposition before the Court had stated that the demand started one month after the marriage and the husband demanded Rs.10,000/- for purchase of a motorcycle and that amount was paid and her daughter returned with her husband. After a month, Subhash and Madhu Bala visited their house and a demand of Rs.20,000/- was made and they

could only give Rs.15,000/-. On both the occasions the daughter had complained that she was subjected to maltreatment for bringing less dowry. Each time the parents sent the girl back after giving some cash. On the last occasion i.e. on 06.12.1999 a sum of Rs.50,000/- was demanded and a sum of Rs.25,000/- was paid. On 17.12.1999 the younger brother of Subhash came to their house and informed that Madhu Bala was taken to the hospital at Gurgaon and her condition was critical. On the way, they were told that Madhu was taken to the Safdarjang Hospital and when they reached the hospital, they learnt that she had died.

5. The SDM had recorded the statement Ex.PA. The accused failed to claim the dead body and the parents received the body after the postmortem and on 20.12.1999 a complaint was given to the police.

6. Dr. Alexander of Safdarjang Hospital conducted the postmortem examination. He stated that there was smell of kerosene all over the body and there were 100% burn injuries. He proved the postmortem report Ex.PR.

7. In the statement under Section 313 Cr.P.C., the plea taken was that Subhash was residing separately and had a separate ration card and it was an accident.

8. The trial Court noted that the death was within 7½ months of the marriage and the girl was pregnant and invoked the presumption under Section 113-B of the Evidence Act and convicted only the husband.

9. At the outset, it would be appropriate to refer to the essential ingredients of Section 304-B and Section 113-B respectively contained in the Indian Penal Code and the Evidence Act.

Section 304-B reads as 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."

10. Parliament has inserted [Section 113B](#) in the [Evidence Act](#), which reads as under:

"113B. 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.

Explanation.- For the purposes of this section "dowry death" shall have the same meaning as in [Section 304B](#) of the Indian Penal Code (45 of 1860)"

11. The necessity for insertion of the two provisions has been amply stated by the Law Commission of India in its 21st Report dated 10-8-1988 on "Dowry Deaths and Law Reform".

Keeping in view the impediments in the pre-existing law in securing evidence to prove dowry-related deaths, the Parliament in its wisdom thought to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background that a provision of presumptive evidence by way of [Section 113B](#) in the [Evidence Act](#) has been inserted. As per the definition of "dowry death" in [Section 304B](#) IPC and the wording in the presumptive provision of [Section 113B](#) of the Evidence Act, one of the essential ingredients, amongst others, is that the 'woman' must have been "soon before her death" subjected to cruelty or harassment "for, or in connection with, the demand for dowry".

Presumption in terms of [Section 113B](#) is one of law. On proof of the essentials mentioned therein, it becomes obligatory on the court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials:

- (1) The question before the court must be whether the accused has committed the dowry death of a woman. (This means that the 10 presumption can be raised only if the accused is being tried for the offence under [Section 304B](#) IPC).*
- (2) The woman was subjected to cruelty or harassment by her husband or his relatives.*
- (3) Such cruelty or harassment was for, or in connection with, any demand for dowry.*
- (4) Such cruelty or harassment was soon before her death.*

12. A conjoint reading of Section 304-B of IPC and Section 113-B of the Evidence Act shows that in order to prove the charge of dowry death, the prosecution has to establish that the victim had died within 7 years of marriage and she was subjected to cruelty or harassment soon before her death and such cruelty or harassment was for dowry. Therefore, in each case, the Court has to examine and analyze the facts and circumstances leading to the death of the victim and decide whether there is a proximate case between the demand of dowry and the act of cruelty or harassment.

13. I have considered the submissions made on behalf of both the sides.

14. The marriage and the death took place within 7½ months of the marriage. The girl had died of burn injuries in Safdarjang Hospital. It is not in dispute that the husband had taken her to the hospital. The information was given to the parents by the younger brother of the husband. Kanta, mother of the deceased in her complaint had mentioned that her daughter had been killed on account of demand of dowry and the in-laws had set her ablaze.

15. A plain reading of Section 113-B of the Evidence Act would show that the presumption can be invoked where the death take place within 7 years of marriage and when the girl is subjected to cruelty by her husband or relatives and the Court can presume even in the case where there is a suicide that it was abetted by them. The mother has spoken about the constant demands that were made and the

amount they had paid from time to time. The fact that a young life was snuffed within 8 months of the marriage goes to show that soon before the death there were constant harassment and demands relating to dowry and the inference can be drawn against the appellants. The accused has not come up with any explanation as to what drove the girl to end her life. The parents have spoken about the amount which was paid from time to time. The last visit by the girl was 10 days before her death. The defence version was that Madhu Bala had caught fire accidentally while working in the kitchen but police did not find any such evidence. The Medical Officer had found smell of kerosene all over the body.

16. There were demands and the family had been fulfilling the demands. The girl had been conveying about her harassment. The trial Court had minutely examined the evidence and had noted that the accused knew the time of incident but failed to take her to the hospital in time nor disclosed the name of the hospital. It would be necessary to reproduce the relevant portion of para no.11, which reads as under :-

“The defence version is that first she was taken to Gurgaon and then she was taken to Delhi. There is no evidence in which hospital at Gurgaon she was taken and what treatment was given to her there and why she was referred or taken to Delhi. That version may be for covering delay. No effort was made for getting recorded the dying declaration. The time of occurrence was known to the accused. They gave their own version before the doctor. Whether she was conscious or not when taken to the hospital is not known. Sudhir first took the complainant and her husband to Gurgaon and then to Delhi. It caused much delay.”

17. The girl had been married only for 7½ months. She was carrying a child in the womb. The family members have spoken about the constant demands. I find no infirmity in the order of conviction & sentence and are affirmed.

18. The counsel appearing for the complainant relying upon the judgment of *Banarsi Dass and others Vs. State of Haryana 2015(1) RCR (Crl.) 363* urged that some compensation should have been ordered for the parents.

19. I am of the view that the appellant is entitled to pay compensation of Rs.25,000/-, which would be paid to the complainant-revisionist within two months, failing which, District Magistrate, Gurgaon shall take coercive steps to recover it and pay it to the complainant. The appeal is dismissed. Revision is partly allowed.

Copy of this order be sent to District Magistrate, Gurgaon.

(ANITA CHAUDHRY)
JUDGE

24.08.2016

'Sunil'

Whether speaking/reasoned : Yes/No

Whether reportable : *Yes/No*