

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

CRA-D-444-DB-2003.

Date of Decision: 03.08.2016.

Manmohan

....Appellant.

VERSUS

State of Haryana

....Respondent.

**CORAM : HON'BLE MR. JUSTICE M. JEYAPPAUL
HON'BLE MRS. JUSTICE SNEH PRASHAR**

Present: Mr. Tapan Kumar Yadav, Advocate for the appellant.

Mr. Kapil Aggarwal, Additional Advocate General, Haryana.

SNEH PRASHAR, J.

The appellant, having been convicted and sentenced for commission of offences under Sections 498-A and 304-B of the Indian Penal Code (for short, "I.P.C.") vide judgment and order dated 17.04.2003/ 18.04.2003 passed by learned Sessions Judge, Gurgaon, had filed the instant appeal. The sentence awarded to the appellant was under:-

Sr. No.	Under Section	Sentence
1.	498-A IPC	Rigorous Imprisonment for a period of three years and to pay a fine of Rs.10,000/-. In default of payment of fine, to undergo further Rigorous Imprisonment for a period of six months.
2.	304-B IPC	Imprisonment for life.

It was ordered that the substantive sentences shall run concurrently.

The relevant facts garnered from the record are recapitulated hereunder:-

Complainant Giasi Ram had five daughters and three sons. His daughter Anila (since deceased) was married to Manmohan, an Army personnel on 08.03.1997. In his complaint Ex.PA given to the police on 04.10.1999, Giasi Ram stated that he had given dowry consisting of valuable articles like scooter, refrigerator, television, ornaments etc. besides a sum of Rs.51,000/- in cash and had spent on marriage in excess of his financial capability. His daughter informed him that her husband, parents-in-law and sister-in-law were not happy with the black and white television and had asked for a colour T.V. He then gave a colour T.V., but when his daughter visited his house, she informed him, her mother and younger brother Naresh that her in-laws were demanding Rs.50,000/- in cash from her and on resistance by her they had been beating her. Anila gave birth to a female child and on that occasion all customary gifts including cash amount etc. were given by him to her in-laws family.

The complainant further stated that her daughter about 20-25 days prior to that day i.e. 04.10.1999, his son-in-law Manmohan visited his house and informed him in the presence of his wife and son that he had belaboured Anila before coming to their house and he declared that in case his demand for a Maruti car is not fulfilled, he and his family members would finish Anila. On the next day, he sent his son Naresh to enquire about Anila. After visiting her, Naresh informed him that there was tension in the house but Anila was not being beaten any more but her in-laws were demanding money.

The complainant added that after Anila had given birth to a

daughter, neither she was being sent to her parental home nor his sons were allowed to meet her. About 5-6 days prior to that day i.e. 04.10.1999, Kartar had threatened him in the village to fulfill the demand of his son. On that day i.e. 04.10.1999, Ishwar son of Puran Singh, resident of village Ghosgarh informed him that his daughter had locked the door from inside and was not responding to the call. Thereupon he alongwith Jai Narain, Mahinder Singh and Ram Saran of his village went to village Ghosgarh and saw that his daughter was hanging. The police arrived and first opened the window of the room with the help of a 'Danda' and then opened the bolt (Sankal) of the door. On going inside, Anila was found dead.

The complainant expressed suspicion that because of greed of dowry, his daughter had been murdered on the planning of his son-in-law Manmohan by Kartar, father-in-law, Sarwan Devi, mother-in-law of their daughter.

Based on the complaint given by Giasi Ram, father of the deceased Anila, a First Information Report No.217 dated 04.10.1999 (Ex.PA/2) was registered against Kartar, Sarwan Devi and Manmohan. During investigation, Kartar and Sarwan Devi alongwith their daughter Asha Kumari were arrested, but Manmohan, husband of the deceased was not arrested. On completion of investigation and necessary formalities, the charge sheet was presented against the aforesaid three accused and the name of Manmohan-appellant was mentioned as not challaned.

During trial, on an application under Section 319 of the Code of Criminal Procedure (for short, "Cr.P.C.") filed by the prosecution, appellant Manmohan was summoned by learned trial Court by virtue of

All the four accused were charge-sheeted for the commission of offence under Sections 498-A and 304-B I.P.C., to which they pleaded not guilty and claimed trial.

As many as 11 witnesses namely PW1 Dr. S.K. Sharma, PW2 Nirmla Devi, PW3 Constable Rajesh Kumar, PW4 Constable Sarwan Kumar, PW5 ASI Sahi Ram, PW6 Constable Surinder Singh, PW7 ASI Siri Dev, PW8 Rajbir, PW9 Giasi Ram, PW10 Naresh Kumar and PW11 Inspector Bhoop Singh were examined by the prosecution to substantiate the charges.

After closure of prosecution evidence, in their statements under Section 313 Cr.P.C., the appellant as well as the other accused namely Kartar, Asha Kumari and Sarwan Devi stated that they had never demanded any dowry or had harassed Anila. She was living comfortably with them and was pursuing advance education and that she committed suicide under depression. Appellant Manmohan added that he is serving in Indian Army. During the relevant days, Kargil conflict was going on and he was deployed on duty in Baramula Kashmir. His wife, who was pregnant, was being looked after properly by his parents and used to be taken regularly to the doctor at Pataudi for check up. His father had also arranged tuition for her at home for the course she was pursuing.

To prove the defence, set up by the accused, they examined DW1 Dr. Neeraj Chauhan, DW2 O.P. Tanwar and DW3 Head Constable Nisar Ahmad.

Considering the arguments advanced by the learned Public Prosecutor for the State and counsel representing the accused, learned trial

convicted and sentenced accused Manmohan (appellant) as indicated above.

Feeling aggrieved, the convict (appellant) preferred the instant appeal.

Heard the submissions made by Mr. Tapan Kumar Yadav, learned counsel representing the appellant and Mr. Kapil Aggarwal, Additional Advocate General, Haryana.

Admittedly, the appellant, husband of the deceased was serving in Army when the occurrence took place. Against him, the allegation in the First Information Report lodged by PW9 Giasi Ram, father of the deceased, was that immediately after marriage he had demanded a colour T.V. which was given by him. Subsequent to that, the complainant stated, firstly that when his daughter Anila visited his house, she told him, his wife and younger son Naresh that her in-laws were demanding cash amount of Rs.50,000/- and when she resisted their demand, they gave her beating and secondly, that on the occasion of birth of a female child to his daughter, he gave sufficient clothes customary gifts. The complainant did not specifically name either the appellant or any other member of his family, who had raised demand for cash of Rs.50,000/- etc. He also did not state that anything was demanded from him when his daughter gave birth to a female child.

Importantly, nothing was stated by the complainant about the fate of the female child. It shall be relevant to mention here that in his defence the appellant examined DW1 Dr. Neeraj Chauhan of Chiranjiv Hiospital, Haily Mandi, who stated that in the year 1998 at the time of first pregnancy of Anila, the fetus had congenital abnormality and she was referred to Delhi and the baby had expired immediately after delivery. When

complainant stated that on the occasion of birth of a female child to his daughter, he had given customary gifts and clothes etc. to her in-laws family. There is clear concealment of true facts and exaggeration on part of the complainant.

In addition to the above statement wherein the complainant had only attributed demand of a colour T.V. by his son-in-law (appellant) which he had fulfilled, the allegation of the complainant was that 20-25 days prior to the date of occurrence i.e. 04.10.1999 his son-in-law had visited his house and demanded a Maruti car saying that he had come after giving beatings to his daughter and that if his demand of Maruti car is not fulfilled, he and his family members would finish his daughter. He further stated that on the next day, he sent his son to meet Anila, who came back and informed him that although there was tension in the house, but Anila was not given more beating and that they were demanding money. Here again he did not name the person in the in-laws family of his deceased daughter, who was demanding money. Apart from that the complainant stated that after his daughter had given birth to a female child, she was not being sent to her parental home and his sons were not being allowed to meet her and further that 5-6 days prior to the date of occurrence i.e. 04.10.1999, Kartar (father-in-law of the deceased), had threatened him in the village to fulfill the demand of his son.

As per version of the complainant, he had met the appellant 20-25 days prior to 04.10.1999 when he had come to his house and had demanded a Maruti car. The two material witnesses examined by the prosecution to prove its allegations of demand of dowry i.e. Maruti car by

deceased. In his statement, PW9 Giasi Ram reiterated that 20-25 days prior to the day his daughter Anila died, the appellant had come to his house and told him that he had given beating to his daughter before starting for his place and that he would kill her if his demands were not fulfilled. His demand was for a Maruti car. In his cross-examination, he admitted that Kargil conflict was in progress when appellant Manmohan visited his house 25-26 days prior to the death of Anila. He stated that he was in transit to Kargil on transfer from some other place and had visited his house during transit period.

It is noteworthy that during his statement the complainant stated that his daughter had been telling her mother about the demand of dowry by her in-laws and his wife used to tell him regarding the same after his daughter had left his place. In very clear and plane words he also stated that Anila used to tell him that she was living properly and that he should not worry about her and she used to inform her mother about the real situation.

From the above statement of PW9 Giasi Ram, it is apparent that deceased Anila had never personally talked to him that her in-laws were demanding dowry. His wife would intimate to him what Anila told her. However, his wife (mother of the deceased) was not examined. It being so, the only occasion on which the complainant could allege that the appellant raised demand for a Maruti car in his presence was the day he visited his house 25-26 days prior to the death of Anila. On the same lines is the statement of PW10 Naresh Kumar. He too stated that 20-25 days prior to death of Anila, appellant Manmohan had come to their house after beating

demand is not fulfilled, his daughter would be done to death.

As observed above, it is an admitted fact that the appellant was serving in Army when the occurrence took place. The plea taken by him in defence from the very beginning was that during the relevant days Kargil war was going on and he was posted in Baramula Kashmir and had come on casual leave only in the month of August i.e. from 13.08.1999 to 17.08.1999. To substantiate his plea he examined DW3 Head Constable Nisar Ahmed of 28 Rashtriya Rifles. He stated that as per record, the appellant was on leave for five days from 13.08.1999 to 17.08.1999. As per food record, he started taking his food at the mess w.e.f. 01.09.1999 and he had taken food for that complete month. In the month of October, 1999, he had taken food from 1st to 15th of that month and had proceeded on leave w.e.f. 17.10.1999. In his cross-examination, DW3 stated that from 25th August onwards the appellant was in the transit camp and that he did not avail any leave during the period 01.09.1999 to 01.10.1999. In his re-examination also, he reiterated that apart from leave w.e.f. 13.08.1999 to 17.08.1999 he had not taken leave in the month of August, 1999. The witness mentioned that the formal unit of the appellant could only indicate his whereabouts from 18.08.1999 to 25.08.1999.

When the appellant had not taken any leave in the month of August after 17.08.1999 and in the month of September, 1999 or in October upto the date of incident i.e. 04.10.1999, the version of the complainant that he had visited him 25-26 days prior to 04.10.1999 is proved to be wrong. The appellant may be in transit to Kargil from 18.08.1999 till he joined the unit of DW3 where as per food record he started taking food in the mess

taken any leave either in the month of August, 1999 after 17.08.1999 or in the month of September, 1999. When the very visit of the appellant to the house of the complainant 25-26 days prior to the death of Anila could not be established by the prosecution, there is hardly any scope to believe that the appellant had raised demand for a Maruti car before the complainant or had given any threatening in that regard.

From the above, it follows that the prosecution utterly failed to prove its allegation that the appellant had raised demand of dowry from the deceased or from the complainant. He had not even met the deceased or the complainant immediately prior to the occurrence. He had visited home on leave atleast 1½ months prior to the occurrence. When the appellant was at his posting station and was not in company of the deceased when she committed suicide, it becomes improbable that she died because she was facing harassment at the hands of the appellant on account of his demand for dowry. By no stretch of imagination, the death of the deceased could be related to any act on part of the appellant.

Accordingly, the appeal is allowed and the judgment of conviction and order of sentence dated 17.04.2003/18.04.2003 passed by the trial Court against appellant Manmohan under Sections 498-A and 304-B I.P.C. stand set aside. The appellant is acquitted of the charges framed against him. The bail/ surety bonds executed by the appellant shall stand discharged.

(M. Jeyapaul)
Judge

(Sneh Prashar)
Judge

03.08.2016
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