

Crl. Appeal No.S-593-SB of 1999

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

Crl. Appeal No.S-593-SB of 1999

Date of Decision: 25.05.2016

Gora Singh alias Gurvinder Singh alias
Balwinder Singh and others

....Appellants

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 ? (Yes/No)**
- 2. To be referred to reporters or not ? (Yes/No)**
- 3. Whether the judgment should be reported in the Digest ? (Yes/No)**

Present:- Ms. Diya Sodhi, Advocate
for the appellants.

Mr. B.S. Virk, D.A.G., Haryana
for the respondent-State.

DAYA CHAUDHARY, J.

The present appeal has been filed to challenge the judgment of conviction and order of sentence dated 11/14.06.1999 passed by the Sessions Judge, Sirsa, whereby, the accused-appellants have been convicted for offence punishable under Section 304-B IPC and have been sentenced to undergo rigorous imprisonment for a period of seven years with fine of ₹ 500/- each with default clause.

Briefly, the facts as per the prosecution version, the complainant-Boota Singh stated that he had adopted Nirmal Kaur (since deceased) who was the daughter of his maternal uncle Roorh Singh. Her marriage was solemnized with Gora alias Lakhwinder Singh-accused.

Sufficient dowry was given according to his capacity but still in-laws of Nirmal Kaur were not happy with the dowry and she was being harassed by Gora (husband), Baldev Kaur (mother-in-law), Jasbir Kaur @ Seero-sister in law (Nanad). A demand of ₹ 2 lacs was also made by her in-laws but when the demand was not fulfilled, Nirmal Kaur was harassed. The fact regarding demand of dowry and harassment thereof was even revealed by the deceased to the complainant when he visited the house of in-laws of Nirmal Kaur and a *panchayat* was also convened but ultimately, Nirmal Kaur died due to poisoning. On the basis of statement of the complainant, FIR No.259 dated 18.09.1997 was registered and accused-appellants faced trial.

The prosecution examined as many as 11 witnesses. The defence also examined DW-1 Dr. Shiv Shankar Sharma, DW-2 Sukhminder Kaur and DW-3 Ravinder Kumar alias Ravinder Singh.

On appraisal of evidence of prosecution as well as defence witnesses, the trial Court convicted accused-appellants, namely, Gora Singh @ Gurvinder Singh @ Balwinder Singh (husband), Baldev Kaur (mother-in-law) and Jasbir Kaur @ Seero (Sister-in-law (Nanad)) for offence punishable under Section 304-B IPC. All the accused were convicted and were sentenced to undergo rigorous imprisonment for a period of seven years with fine of ₹ 500/- each with default clause vide judgment dated 11/14.06.1999 passed by Sessions Judge, Sirsa.

The said judgment of conviction and order of sentence has been challenged by the appellants by way of filing the present appeal.

Learned counsel for the appellants submits that the judgment of conviction is not based on proper appreciation of evidence available on record. The accused-appellants were initially charged under Section 498-A IPC as well as Section 304-B IPC but they have been acquitted for

offence punishable under Section 498-A IPC. Learned counsel also submits that as per statement of the complainant, he was informed by one Geera with regard to the incident but said Geera was not examined and as such, the case is based only on hear-say evidence. Not only serious contradictions and inconsistencies are there in the statements of prosecution witnesses but the case of the prosecution appears to be doubtful as no witness of the locality was examined. Prosecution witnesses PW-1 and PW-2 were not present on the date of occurrence. PW-1 was away due to examination. Although allegations of harassment were there but no complaint was ever made to the police. The deceased was adopted by the complainant but the information regarding her death was not given to her father.

It is also the argument of learned counsel for the appellants that once demand of dowry has not been proved and the accused have been acquitted of the charge under Section 498-A IPC, no offence is made out under Section 304-B IPC and at the most, it can be a case under Section 306 IPC. Only a bald allegation is there that an amount of ₹ 2 lacs was demanded by the accused-appellants, whereas, there was no document to show that such demand was ever made. Learned counsel also submits that even the adoption of deceased Nirmal Kaur has not been proved. Father of deceased-Nirmal Kaur was examined as PW-7 just to fill up the lacuna in the prosecution case. Learned counsel submits that in order to prove factum of harassment soon before death, the prosecution examined Hardev Singh, father-in-law of Boota Singh, who has stated that a day before death of Nirmal Kaur, he went to the house of her-in-laws, where she made a complaint to him regarding harassment and torture at the hands of the appellants and with regard to demand of ₹ 2 lacs.

As per statement of PW-2 Hardev Singh, he was planning to

convene a *panchayat* but an information was received that Nirmal Kaur had been given some poisonous substance. The statements of said two witnesses are contradictory as the father of deceased was not aware even about convening of *panchayat*. The fact that Roorh Singh-the father of deceased was never in touch with regard to convening a *panchayat* or any harassment being caused by the accused, which doubts the prosecution version. Even the information regarding death of deceased was not conveyed to him. Learned counsel also submits that it has been proved from the statement of different defence witnesses that deceased-Nirmal Kaur had suffered two miscarriage and she remained under depression on account of not having a child. She was also being given treatment for her ailment but the same has not been considered by the trial Court. Complainant-Bootia Singh has come with a new story by concocting false facts just to implicate the in-laws of Nirmal Kaur. It was done with some ulterior motive. The statements made by defence witnesses were relevant but the same were not considered.

Learned counsel for the appellants has relied upon the judgments of Hon'ble the Apex Court in cases ***Sher Singh @ Partapa vs State of Haryana 2015(3) SCC 724, Manohar Lal vs State of Haryana 2014(3) RCR (Criminal) 787, Bhola Ram vs State of Punjab 2013(16) SCC 421*** as well as ***Baljinder Kaur vs State of Punjab 2015(2) SCC 629*** in support of her arguments.

Learned counsel for the respondent-State submits that the judgment of trial Court is well reasoned and is based on proper appreciation of evidence.

Heard the arguments of learned counsel for the parties and have also perused the statements of prosecution as well as defence witnesses and other documents available on the file of the trial Court.

Admittedly, the accused-appellants faced trial for offence punishable under Section 304-B IPC and they were convicted by the trial Court vide judgment dated 11.06.1999. The FIR, in the case, was registered on the basis of statement made by complainant-Boota Singh under Sections 498-A and 304-B IPC but the accused-appellants were acquitted of the charge for offence under Section 498-A IPC and were convicted under Section 304-B IPC. The judgment of conviction and order of sentence has been challenged on the ground that the prosecution version appears to be doubtful as not only contradictions and discrepancies are there but the statements of prosecution witnesses are also contrary to the facts. It is also the argument of learned counsel for the appellants that the allegations of demand of dowry have not been proved and the accused-appellants have been acquitted of the charge for offence punishable under Section 498-A IPC but they have wrongly been convicted under Section 304-B IPC. For conviction under Section 304-B IC, there should be a link evidence that the deceased was harassed or death occurred because of cruelty caused by accused persons. In the absence of specific instances of cruelty or harassment, the offence under Section 304-B IPC cannot be there. For offence punishable under Section 304-B IPC, the cruelty or harassment in connection with dowry and cruelty soon before death are required to be proved.

Section 304-B IPC relates to dowry death, which is reproduced 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.”

For the purpose of said offence, a presumption can be raised, in case, the following ingredients are there :

- (a) Death of the woman was caused by burns or bodily injury or occurs otherwise than under normal circumstances.
- (b) Such death took place within seven years of her marriage.
- (c) The woman was subjected to cruelty or harassment by her husband or his relatives.
- (d) Such cruelty or harassment was for, or in connection with, any demand for dowry and
- (e) Such cruelty or harassment was soon before her death.

As per provisions of Section 304-B IPC, the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances. Such a death must have occurred within seven years of the marriage. The third ingredient is that a woman must have been subjected to cruelty or harassment by her husband or by any relative of her husband soon before her death. Such cruelty or harassment must be in connection with demand of dowry.

In case, the aforesaid ingredients are established on the basis of statement of prosecution witnesses then only the death shall be

considered as “dowry death” and in such like circumstances, husband or his relatives shall be deemed to have caused her death. The expression “**soon before death**” used in Section 304-B IPC and Section 113-B of the Evidence Act is also necessary for the controversy in hand. Section 113-B of the Evidence Act is relevant as the same has been inserted, in case, the death is there within seven years of the marriage and soon before death, there was serious allegation of demand of dowry or harassment, then presumption is raised under Section 113-B of the Evidence Act. Section 113-B of the Evidence Act is reproduced as under :-

“ 113B. **Presumption as to dowry death** – When the question is whether a person has committed the dowry death of a women 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.”

As per the definition of ‘**dowry death**’ in Section 304B IPC and on perusal of Section 113-B of the Evidence Act, it is necessary to prove that ‘**soon before death**’, the woman concerned had been subjected to cruelty or harassment in connection with demand of dowry. On proving these essentials as mentioned above, then presumption is there under Section 113-B of the Evidence Act that the accused has caused dowry death. The expression “**soon before death**” in Section 304-B IPC and **Section 113-B of the Evidence Act** was considered by Hon'ble the Apex Court in case **Hira Lal vs State (Govt. of NCT) Delhi, 2003(3) R.C.R. (Criminal) 830**. In paragraph 9 of the said judgment, it was observed as under :-

“9. A conjoint reading of [Section 113-B](#) of the Evidence Act and [Section 304-B](#) IPC shows that there must be material to show that soon before her death the victim

was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of “death occurring otherwise than in normal circumstances”. The expression “soon before” is very relevant where [Section 113-B](#) of the Evidence Act and [Section 304-B](#) IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by the prosecution. “Soon before” is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under [Section 113-B](#) of the Evidence Act. The expression “soon before her death” used in the substantive [Section 304-B](#) IPC and [Section 113-B](#) of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression 'soon before' is not defined. A reference to expression “soon before” used in [Section 114](#). Illustration (a) of the [Evidence Act](#) is relevant. It lays down that a Court may presume that a man who is in the possession of goods “soon after the theft, is either the thief has received the goods knowing them to be stolen, unless he can account for his possession”. The determination of the period which can come within the term “soon before” is left to be determined by the Courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression “soon before” would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live-link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale

enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.”

Same issue was raised in judgment of Hon'ble the Apex Court in case ***Kamesh Panjiyar alias Kamlesh Panjiyar vs State of Bihar 2005(2) SCC 388***, wherein it was held as under :-

“.....The expression ‘soon before’ is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by prosecution. ‘Soon before’ is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. The expression ‘soon before her death’ used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test....”

Similar view was taken in another judgment of Hon'ble the Apex Court in ***Thakkan Jha and others vs State of Bihar 2004(13) SCC 348***, which is as under :-

“16. The above decisions of this Court laid down the proximity test i.e there must be material to show that “soon before her death” the woman was subjected to cruelty or harassment “for or in connection with dowry”. The facts must show the existence of a proximate live link between the effect of cruelty based on dowry demand and the death of the victim. “Soon before death” is a relative term and no strait-jacket formula can be laid down fixing any time-limit. The determination of the period which can come within the

term “soon before death” is left to be determined by the Courts depending upon the facts and circumstances of each case.”

The trial Court, on appreciation of evidence on record, acquitted the accused-appellants for offence punishable under Section 498-A IPC as the allegations of demand of dowry were not proved. It has been mentioned in the judgment of trial Court that the prosecution has failed to prove that there was demand of dowry soon before the death. As per statement of Boota Singh, the accused persons started to harass deceased-Nirmal Kaur by stating that the dowry brought by her was inadequate and a demand of ₹ 2 lacs was also raised by the accused persons. There is nothing on record to show as to whether any complaint was made when harassment was caused. Similarly, the allegation of demand of ₹ 2 lacs was made by the accused-appellants but nothing has been mentioned as to what was given and when demand was made. Deceased-Nirmal Kaur was stated to be the adopted daughter of the complainant. Roorh Singh, the father of deceased Nirmal Kaur was not examined during investigation and was subsequently examined as PW-7 during trial just to fill up the *lacuna*. The prosecution has examined Hardev Singh, father-in-law of Boota Singh, who has stated that a day before death of Nirmal Kaur, he went to the house of her in-laws in Village Baragudha and Nirmal Kaur made a complaint to him of her being harassed and tortured at the hands of accused-appellants. It was also stated by him that he was told by deceased Nirmal Kaur that the appellants were making demand of ₹ 2 lacs. It was for the prosecution to unfold the truth as stated by Hardev Singh as they were thinking of convening a *panchayat* regarding torture meted out to deceased Nirmal Kaur but they received a news that some poisonous substance has been given to her. The natural father of deceased-Nirmal Kaur was neither aware regarding

the harassment being caused to his daughter nor about convening of any *panchayat* at the instance of complainant on account of demand of ₹ 2 lacs made by the appellants which alone is not worth believing. Even after lodging of FIR by complainant-Bootla Singh, no intimation was given to Roorh Singh. The prosecution has also examined one Pritam Singh just to fill up the *lacuna*. There is no link evidence and the story put up by the prosecution appears to be doubtful on perusal of statement of certain witnesses.

For proving offence under Section 304-B IPC, there should be a demand of dowry and the death of a woman should be caused within seven years of marriage. In absence of any demand of dowry, the death cannot be connected with offence under Section 304-B IPC. Just to make out an offence under Section 304-B IPC, the death of a woman has to be proved to occur under abnormal circumstances and such death should be within a period of seven years of marriage. Such woman must have been subjected to cruelty or harassment for, or in connection with, any demand of dowry and soon before her death.

In the present case, the death is within seven years of marriage and it was a case of un-natural death also but the allegations of demand of dowry and harassment could not be proved as accused-appellants have been acquitted for offence punishable under Section 498-A IPC. Even it has not been proved that the harassment or cruelty was soon before the death.

For offence under Section 304-B IPC, there must be some material to show that soon before the death, the woman was subjected to cruelty or harassment. The facts and evidence must prove the existence of a proximate live link between the effect of cruelty based on dowry demand and the death of the victim. Words “**soon before death**” is a relative term

and no straitjacket formula can be laid down for fixing any time limit.

In the present case, neither the demand of dowry nor any harassment in connection thereof has been proved. Serious discrepancies and contradictions are there in the statements of witnesses. The real father of the deceased was not aware about harassment, demand of dowry and even about the incident of death. Even nothing has come on record to prove that Boota Singh had adopted Nirmal Kaur or he had performed her marriage. The testimony of Hardev Singh, the maternal grandfather of deceased, cannot be relied upon as it has not been proved on record that the natural father of the deceased was informed. Instead of giving information to father of the deceased, the intimation was given to cousin brother of maternal grandfather. Roorh Singh, the father of the deceased was examined by the prosecution as witness but no instance is there that any complaint was ever made by him or any intimation was given to the police. It has come in the statement of defence witness that the deceased consumed *celphos* tablet by mistake as she was under depression and mentally disturbed on account of having frequent abortions. She was taking regular treatment. It was for the prosecution to prove that the dowry death has occurred in case of un-natural death within a period of seven years of marriage and the deceased had been subjected to cruelty and harassment by her husband or his relatives.

In the present case, the demand of dowry and harassment has not been proved and the accused-appellants have been acquitted of the charge. The purpose of Section 113-B of the Indian Evidence Act and Section 304-B of the Indian Penal Code, is to counter what is commonly encountered – the lack or the absence of evidence in the case of suicide or death of a woman within seven years of marriage. If the word “shown” has to be given its ordinary meaning then it would only require the prosecution

to prove on the basis of evidence before the Court and not necessary through oral deposition but on the basis of evidence during trial.

In **Manohar Lal's** case (supra), the charge sheet was filed under Sections 498-A and 304-B IPC but the trial Court did not convict the accused under Section 498-A IPC. The judgment of conviction was set aside and the accused was acquitted of the charge.

Similar observation was made by Hon'ble the Apex Court in case **Balwant Singh and another vs State of Punjab 2004(7) SCC 724**, which is as under :-

“10. These decisions and other decisions of this Court do lay down the proximity test. It has been reiterated in several decisions of this Court that “**soon before**” is an expression which permits of elasticity, and therefore the proximity test has to be applied keeping in view the facts and circumstances of each case. The facts must show the existence of a proximate live link between the effect of cruelty based on dowry demand and the death of the victim.”

In the said judgment also, there was no specific incident of cruelty or harassment made by the accused. The allegations of demand of dowry were levelled but none of the witnesses stated that the harassment was soon before death or in connection with demand of dowry. The accused was charge-sheeted under Sections 498-A and 304-B IPC but the trial Court did not convict the accused under Section 498-A IPC.

Hon'ble the Apex Court in the said judgment has held that the prosecution has miserably failed to prove that the accused harassed the deceased soon before her death for or in connection with a demand of dowry. The judgment of the trial Court was upheld by this Court. Hon'ble the Apex Court set aside the judgment of trial Court as well as of this Court and the accused was acquitted of the charge under Section 304-B IPC.

In the present case also, the allegations of demand of dowry and harassment have not been proved by the trial Court and the accused-appellants were acquitted of the charge. In spite of giving a specific finding by the trial Court, still the accused-appellants have been convicted for offence punishable under Section 304-B IPC. All ingredients which are necessary to prove the offence punishable under Section 304-B IPC and presumption under Section 113 of the Indian Evidence Act, have not been fulfilled and the accused-appellants cannot be convicted unless all ingredients are proved. The prosecution is to prove its case beyond reasonable doubt but in the present case, the prosecution has failed to prove the demand of dowry and harassment as the trial Court has not taken into consideration this important issue and has convicted the accused-appellants for offence punishable under Section 304-B IPC.

In view of the facts as well as law position as discussed above, the present petition is allowed and the judgment of conviction and order of sentence dated 11/14.06.1999 passed by the Sessions Judge, Sirsa is set aside. The accused-appellants are acquitted of the charge under Section 304-B IPC.

The accused-appellants are on bail as their sentence was suspended during pendency of the appeal. The bail/surety bonds furnished by the accused-appellants are discharged.

(DAYA CHAUDHARY)

JUDGE

25.05.2016
gurpreet