

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-922-SB-1999 (O&M)
Date of Decision: 06.04.2016

Bhushan Kumar **... Appellant**
Versus
State of Punjab **... Respondent**

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

- 1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
- 2. To be referred to the Reporters or not? Yes/No
- 3. Whether the judgment should be reported in the digest? Yes/No

**Present: Mrs. Baljit K. Mann, Advocate
for the appellant.**

**Mr. K.S. Aulakh, A.A.G., Punjab,
counsel for the respondent-State.**

ANITA CHAUDHRY, J.

This appeal is directed against the judgment and order of conviction and sentence dated 22.09.1999, passed by the Additional Sessions Judge, Kapurthala, vide which the appellant was sentenced to undergo the following punishment:-

Under Sections	Simple Imprisonment for a period of	Fine	In default of payment of fine
304-B IPC	7 years	-	-
498-A IPC	2 years	Rs.1000/-	6 months

Both the sentences were ordered to run concurrently.

The sister of the complainant was married to Bhushan Kumar, appellant in May, 1991. Two children were born out of the wedlock. Bhushan separated from his parents about a year after his marriage. The allegations were that Bhushan was demanding money to start a business. Anita Rani came back to her matrimonial home

and paid Rs.35,000/- to her husband. The complainant had levelled allegations that Bhushan Kumar, his mother, brother and brother's wife used to harass her and had thrown taunts for bringing insufficient dowry. Anita had been conveying about the harassment to her brother in the presence of Kundan Lal, Vijay Kumar and some others. The brother counselled her and sent her back to the in-law's house. The complainant received information at 1:30 AM on 26.09.1996 that his sister had suffered a heart-attack and had died. The complainant later learnt that his sister has been strangled by her husband and the Devar, Devrani and mother-in-law had conspired.

The police registered the FIR and filed a challan against the husband, his brother, brother's wife and mother. At the trial, the prosecution examined six witnesses.

In the statement recorded under Section 313 Cr.P.C., the accused abjured the trial and pleaded false implication.

In defence, the accused examined M.R. Sharma, Cashier of Indian Bank - DW1 who brought the ledger account of Nirmal Devi & Bhushan Kumar. Raman Mudgil DW-2 brought the details of UTI shares that were purchased. Vijay Arora, Clerk - DW4 brought the account statement of Bhushan Kumar. Banta Singh – DW5 proved the ration card of Bhushan Kumar.

The trial Court convicted only the husband and acquitted the rest of the accused. He was sentenced to the punishment mentioned here-in-before.

I have heard the counsels of both the sides.

Initiating the arguments, it was submitted by the counsel for the appellant that the husband was separated from the family one year after the marriage and the deceased was a graduate and the husband had purchased Units in the name of his wife and it was not a case of dowry demand and the girl was in touch with a person who was in to witchcraft. It was urged that the complainant has gone to the extent of even denying that the husband had separated from his parents and that goes to show the extent of falsity of the allegation. It was urged that the husband had been depositing amounts in the recurring account in the Post Office in the name of the wife and the wife was nominee in the accounts standing in the name of the husband and Units worth 10,000 were purchased in the name of the daughter and there was no reason why the husband would raise a demand. It was urged that no report or complaint had been given to the police in the last five years. It was urged that the only demand is said to have been made 4 – 5 months prior to the death. It was urged that even if it is assumed for the sake of arguments that there was a demand but it was for expansion of business and that would not bring it in the four corners of dowry demand. It was contended that the family had alleged that the girl had been strangled but the police did not find any evidence. It was submitted that the presumption under Section 113-A of the Evidence Act cannot be invoked as there is no evidence that there was any cruelty or harassment soon before death. It was urged that the trial Court had given a categorical finding that it was a case of hanging and not strangulation and the State has not filed any appeal, therefore, that

finding has become final. It was contended that Vijay – PW3 did not support the prosecution version. Summarizing the submissions, it was urged that there were no allegations of any demand of dowry before or at the time of marriage or even in the first three years of the marriage and the husband had separated from his parents and there was no evidence that the girl was subjected to any harassment in connection with demand of dowry soon before death. Reliance was placed upon ***Smt. Shamo and another Vs. State of Haryana 2004 (3) RCR (Criminal) 722, Rohtash Vs. State of Haryana 2012(4) RCR (Criminal) 538, Asha and another Vs. State of Uttarakhand 2013(4) RCR (Criminal) 1024 and State of Karnataka Vs. Dattaraj & others 2016(1) RCR (Criminal) 1046.***

The State counsel supported the judgment and urged that the prosecution has been able to prove the charges beyond reasonable doubt.

The case of the prosecution was that it was a dowry death and Anita had been done to death by the accused and soon before her death she was subjected to cruelty in relation to demand of dowry. The trial Court held that it was neither a case of strangulation nor or homicide. The appellant alone was convicted and sentenced under Sections 498-A and 304-B IPC.

Section 304-B of the Indian Penal Code lays down that 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 in connection with any demand of dowry, such death shall be called “dowry death”. Similar provision is contained in Section 498-A IPC, where cruelty to a wife by husband or relative in connection with demand of dowry has been made punishable. Section 113-B of the Evidence Act deals with the presumption of “dowry death” and proclaims that when the question is whether a person has committed a dowry death of a woman and it is shown that soon before her death, such woman had been subjected by such person to demand of dowry, the court shall presume that such person had caused “dowry death”. It can, therefore, be seen that irrespective of the fact whether the accused has any direct connection with the death or not, he shall be presumed to have committed the “dowry death” provided the other requirements mentioned above are satisfied.

The main thrust of the appellant was that there was no specific instance of demand and it was not proved that soon before the death the deceased was subjected to cruelty and harassment in connection with demand of dowry and the evidence falls short of the requirement to establish the offence punishable under Section 304-B IPC.

A conjoint reading of Section 113-B of the Indian Evidence Act and Section 304-B IPC shows that there must be material to show that soon before death, the victim was subjected to cruelty or harassment. The expression “soon before” is very relevant where Section 113-B of the Indian Evidence Act and Section 304-B IPC are pressed into service. But, at the same time, “soon

before” is relative terms which is required to be considered under specific circumstances of each case and no straight jacket formula can be laid down by fixing any time limit. These words would imply that the interval should not be too long between time of making the demand and the death. It contemplates reasonable time which as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In other words, demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time, under the circumstances, be treated as having become stale enough.

The unnatural death of Anita within seven years of her marriage in her matrimonial home is not in dispute. In the considered opinion of this Court, the essential ingredient that soon before her death she was subjected to cruelty on account of demand of dowry is conspicuously missing. In the instant case, the prosecution case mainly rests on the testimony of PW2 Yashpal, the brother of the deceased. The other witnesses are the doctor, photographer and the investigating officer. PW3 Vijay Kumar did not support the prosecution case.

Appearing as PW2 Yashpal had deposed that his sister Anita was married to accused Bhushan on 19.05.1991. After four years of marriage, the accused started maltreating Anita to bring more money and 3-4 months prior to her death, she was turned out of the house by the accused and was asked to bring cash for his business. She was given Rs.35000/- which she brought to the house of the accused. The accused continued maltreating Anita and she

was again turned out of the house but was again sent back to the matrimonial home. He had deposed that the deceased had told about the maltreatment in the presence of Kundan and Vijay Kumar, M.C. On the night intervening 25/26.9.1996 he received information regarding her death. They came to the house of the accused and found her dead.

A perusal of testimony of PW2 Yashpal would make it clear that no specific instances of dowry demand were given. No date or month was mentioned as to when the demand was raised by the accused. His evidence also nowhere suggest that "soon before" her death Anita was treated with cruelty in relation to demand of dowry. It is relevant to mention here that in the statement given to the police, Ex.PD, he nowhere had stated about the demand by the accused 3-4 months prior to the death. He had made improvements in the Court and was duly confronted by the defence. According to the prosecution, the incidents of beatings and demand were narrated by the deceased in the presence of Vijay Kumar, MC and one Kundan Lal. But Vijay Kumar, M.C. PW3 did not support the prosecution case and was declared hostile. Kundan Lal was not examined by the prosecution. There is nothing on the record to show that any complaint was made by the complainant about the incidents of beatings or maltreatment. The prosecution case hinges only on the uncorroborated and embellished statement of Yashpal, who was the brother of the deceased. His testimony also falls short of requirement of essential ingredients stipulated under Section 304-B IPC. In absence of any evidence that there was demand of dowry

soon before her death, the presumption under Section 113-B IPC cannot be raised. Reference can be made to Smt. Shamo, Asha and Dattaraj's case (supra).

The allegation against the appellant were that he demanded cash from Anita for starting his business as he had separated from his family. There is overwhelming evidence on record of DW2 Raman Mudgil, DW3 Dalip Gupta and DW4 Vijay Arora, who have proved different investments made by appellant Bhushan in Government schemes from 1992 in favour of Anita. Anita was nominated in some investments. The appellant was having a bank balance of Rs.2,26,921/- as disclosed by DW4 Vijay Kumar, the official from Allahabad Bank. This goes to show that there was no financial constraints. The stand taken by the appellant in his statement under Section 313 Cr.P.C. seems to be probable. Even otherwise, if it is taken that the accused had demanded money for business, it may not necessarily be a demand of dowry.

In the case of ***Virender Singh v. State of Haryana, 2004 (1) RCR (Criminal) 625***, apart from general allegations, demand of Rs.20,000/- for financing a film was made. It was observed that the evidence of dowry demand was somewhat weak. It was held that apart from the general demands, demand of Rs.20,000/- for financing a film could not be said to be dowry demand.

In the case of ***Kakumanu Jayaprasada Rao v. State of Andhra Pradesh, 2005(1) RCR (Criminal) 748***, the husband was in financial distress and demanded Rs.40,000/- from the father of the bride. It was observed that it was not a demand of dowry. The

accused was acquitted of the offence under Section 304-B of the Indian Penal Code. Only scant evidence of relatives of the deceased was available regarding pressure of the husband on the wife to bring the amount. Accused was acquitted of the charge under Section 498-A of the Indian Penal Code.

For the reasons recorded above, the prosecution has miserably failed to prove its case beyond reasonable shadow of doubt. The appeal is allowed. The appellant is acquitted of the charge. His bail bonds and surety bonds stand discharged.

April 06, 2016
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(ANITA CHAUDHRY)
JUDGE