

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

CRA-D-100-DB-2010

Date of decision :January 15, 2016

Ram Kishan

.....Appellant

Versus

State of Haryana

.....Respondent

**CORAM : HON'BLE MR.JUSTICE S.S. SARON
HON'BLE MR.JUSTICE GURMIT RAM**

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present : Mr. Narender Kaajla, Advocate
for the appellant.

Mr. Raj Kumar Makkad, Deputy A.G., Haryana.

GURMIT RAM, J.

1. This appeal is preferred by the abovesaid appellant against the judgment and order of sentence dated 28.10.2009 & 29.10.2009, respectively, passed by the learned Court of Sessions Judge, Fatehabad in criminal case bearing FIR No.37 dated 18.02.2009 under Sections 304-B/34 of the Indian Penal Code ("IPC"-for short), Police Station Bhuna vide which he (appellant) was held guilty for the offences punishable under Sections 304-B and 498-A, IPC and awarded sentence thereunder.

2. Precisely stated the case of the prosecution before the learned Trial Court was that on 18.02.2009, Manoj Kumar SI/SHO along with ASI

Ramesh Kumar and other police officials was present at new bus stand Bhuna in connection with patrolling. There came to him complainant- Bhagirath @ Bhagi Ram s/o Roop Chand r/o village Chakkan along with his brother Surja Ram and made his statement Ex.P1 before him, which was as under:-

“That he is an agriculturist. He performed the marriages of his daughters Sunita Devi and Madna Devi with Krishan Kumar and Ram Kishan sons of Hari Ram r/o village Dholu on 21.05.2004 according to Hindu rites and ceremonies. He gave dowry articles according to his capacity in their said marriages. The 'muklawar' ceremony of his daughter Madna Devi was performed after one year of her marriage. Whereas 'muklawar' ceremony of his elder daughter was performed at the time of her marriage. The in-laws of his daughter Madna Devi started harassing her immediately after her 'muklawar' ceremony as her husband Ram Kishan and her mother-in-law Jamuna Devi started demanding a motorcycle and 'tokny' in the dowry from his daughter. This fact was revealed to him by his daughter while she visited her parental home. Upon this, he along with his daughter Madna Devi, his brother Surja Ram and his son Satyanarain visited village Dholu and persuaded Jamna Devi and his son-in-law and left his daughter in her in-laws' home. She was kept nicely for some days in her in-laws' house, but after that his son-in-law, mother-in-law and father-in-law of her daughter started demanding a sum of ₹1,50,000/- from his daughter for

*installing submersible tubewell. Ram Kumar, the brother-in-law (Jeth) of his daughter started saying that she had destroyed their house since her father had not given anything to them. The husband of his daughter, her parents-in-laws and her brother-in-law (Jeth) used to cause beatings to his said daughter and even she was turned out of her matrimonial house by them at one occasion after giving her beatings. Then she came to her parents house while weeping and crying. She stayed in her parental house for about 2 months and then he took her to her in-laws house along with his brother Surja Ram and son Satyanarian on 13.02.2009 and left her there. His daughter was **surbated** by her abovesaid in-laws including her husband for a period of about 3 ½ years since they used to beat her. Then his nephew Om Parkash received a telephonic call at 9:15 a.m. from his son-in-law Krishan Kumar who further told him (complainant) that his daughter Madna Devi is seriously ill and to reach at village Dholli immediately. He alongwith his abovesaid brother, son and other family members reached at village Dholli after arranging a vehicle where they found his daughter lying dead on a cot in the chobara. They also noticed marks of pulling around her neck and they were satisfied that murder of his daughter Madna Devi had been committed by her husband, parents-in-law and brother-in-law (Jeth) by pressing her neck due to non-fulfilment of their demand of dowry. Prayer was made to take action against the culprits.”*

After recording above statement of the complainant, it was read over to him and that he had thumb marked the same after admitting it to be correct. Ruqa was sent to the police station, on the basis of which the instant case for the offence punishable under Section 304-B/34, IPC, was registered. Thereafter SI/SHO Manoj Kumar reached at the spot and prepared the inquest report qua the dead body of the deceased. Post-mortem on the deadbody was got conducted from Government Hospital Fatehabad. Clothes and ornaments worn by the deceased at the time of post-mortem were removed, which were converted into two parcels and handed-over to the police along with some other relevant documents. Accused Ram Kishan was apprehended on 19.02.2009. Dowry articles were also got recovered which were taken into police possession. During investigation, the alleged accused Ram Kumar, Hari Ram and Jamna Devi were found innocent. Statements of witnesses were recorded. On completion of investigation challan against the accused was presented in the Court of learned Illaqa Magistrate, who further committed the same to the Court of learned Sessions Judge, Fatehabad for trial after making compliance of the provisions of Section 207, Cr.P.C..

3. Finding a prima facie case punishable under Section 304-B, IPC, in the alternative under Section 302, IPC and 498-A, IPC, against the accused, he was charge-sheeted accordingly by the trial Court vide order dated 25.04.2009 to which he pleaded not guilty and claimed trial.

4. After recording the statements of three PWs, the prosecution moved an application under Section 319, Cr.P.C., for summoning of Jamna Devi, Hari Ram and Ram Kumar as the additional accused in this case, which was declined by the learned trial Court vide order dated 15.07.2009.

5. During trial of the case, the prosecution examined eleven

witnesses in all to prove its case against the accused.

6. Then the examination of accused as per provisions of Section 313, Cr.P.C., was duly made during which the entire incriminating evidence brought on record by the prosecution against him was put to him, which was denied by him in toto. Further he pleaded his innocence and false implication in this case, but he admitted his marriage with Madna Devi (since deceased) which was solemnized on 21.05.2004. No dowry articles were given either at the time of his marriage or at the time of 'muklawā' ceremony of Madna Devi which took place after one year of the marriage. He, his parents and his brother Ram Kumar never demanded any dowry or any amount for installation of tubewell from Madna Devi or from her relations nor harassed her during the subsistence of his marriage. Madna Devi was 17 years old at the time of marriage. She was reluctant to sex. She was of hot temperament and of quarrelsome nature. He desired from Madna Devi to perform sex with him on the intervening night of 17/18.02.2009 at about 3:00 a.m. which she refused and started quarrelling with him. They grappled with each-other, as a result of which Madna fell from the cot and while falling, her threads worn in the neck entangled with upper side of the leg of the cot and as a result of which she died due to asphyxia.

7. In the defence, accused also appeared as his own witness as DW-2. Besides this, he also examined Sunita wife of Krishan as DW-1.

8. Learned trial Court after hearing learned counsel for both the parties and examining the record as well held the accused guilty for the offences punishable under Section 304-B and 498-A, IPC and awarded him sentences as detailed below:-

304-B, IPC	To undergo imprisonment for life and to pay fine of ₹10,000/-	In default of payment of fine, to further undergo rigorous imprisonment for three years
498-A, IPC	To undergo rigorous imprisonment for a period of three years and to pay fine of ₹3,000/-	In default of payment of fine, to further undergo rigorous imprisonment for nine months

9. The appellant (accused) being not satisfied with the impugned judgment of conviction and order of sentence has come up before this Court by way of instant appeal, notice of which was given to the respondent-State. Record of learned trial Court was also requisitioned and perused.

10. We have heard learned counsel for both the parties and also perused the record very minutely with their able assistance.

11. The learned counsel for the appellant at the time of the arguments has mainly contended that the impugned judgment of conviction is merely based on surmises and conjectures being quite inconsistent with the evidence on the record brought by prosecution during trial of the case. Then it is his further contention that as per the case of prosecution, the deceased was being maltreated and harassed by the appellant for the last about 5 years on the ground of demand of dowry and it seems very strange as well as unnatural that matter in this regard was never brought to the notice of Panchayat or reported to the Police at any time during this period. Then besides reading the contents of the FIR and the defence version, he does not point out any material infirmity as well as illegality in the impugned judgment of conviction in order to warrant any kind of

interference in it. Lastly, he has contended that the appellant will be satisfied if his sentence be reduced to the extent already undergone by him and this appeal be disposed of accordingly.

12. On the other hand, the learned State Counsel has strongly contended that the impugned judgment of conviction is quite in conformity with the evidence available on record. Further he has submitted that this appeal is liable to be dismissed, as there being no merit in it.

13. The resume of prosecution evidence which came on the record during trial of the case was as under:-

“The father of the deceased i.e. complainant-Bhagirath appeared during trial of the case as PW-1. He narrated the version of prosecution in detail before the Court as per his statement Ex.P1 made by him before the police on 18.02.2009. Then it was also in his statement that his daughter was strangled to death by her husband, mother-in-law, father-in-law and her brother-in-law (*jeth*) on account of non-fulfilment of their demand of dowry.

PW-3 Satnarayan is son of PW-1 Bhagirath. He also supported the version of prosecution by corroborating the statement of PW-1. Then he also proved the memo Ex.P24 vide which two parcels duly sealed containing clothes and ornaments worn by deceased handed over by Doctor to the Police were taken into police possession. Then he also proved list of dowry articles Ex.P25 and Ex.P26 and memo Ex.P27 vide which dowry articles handed over by the accused to the police were taken into police possession.

PW-2 Dr.Surender Bishnoi, Medical Officer was one of the members of the Board of Doctors constituted for conducting Post-Mortem

Examination on the dead body of Madna Devi w/o Ram Kishan on 19.02.2009. He along with Dr. O.P. Dehmiwal and Dr. Renu Chhabra conducted post-mortem examination on dead body of said deceased and found following injuries:-

1. *There was an abrasion of the size $\frac{1}{2} \times \frac{1}{4}$ cms present on the right side of the face.*
2. *Two ligature marks (abrasions), transversely placed and thyroid level parallel to each other 2 cms apart with size of upper ligature mark 4" $\times \frac{1}{2}$ cm present on the right side of lateral aspect of the neck and in front and another of size 7" $\times \frac{1}{2}$ cm present on the right and left side of the neck. On dissection extravasation of blood present.*

Then he also deposed about the clothes as well as ornaments which were found worn by the deceased at the time of post-mortem of her dead body. Then the cause of death in their opinion in this case was asphyxia due to strangulation which was sufficient to cause death in the ordinary course of nature. All the injuries were ante-mortem in nature. Further he proved the copy of post-mortem as Ex.P4 and the opinion as Ex.P5/A given by him on police application Ex.P5. Then during the course of recording of his statement, one parcel bearing seal of FSL was opened in the Court which was found containing one golden nose pin Ex.P6(MO); one pair of ready-made ear-ring Ex.P7(MO) and Ex.P8(MO); one pair of silver *pajeb* Ex.P9(MO) and Ex.P10(MO); one dhol silver Ex.P11(MO); one *pandel* Ex.P12(MO); 22 glass bangles collectively Ex.P13 (1 to 22) (MO); four brass karras Ex.P14, Ex.P15, Ex.P16 and Ex.P17(MO); one thread (dora) yellow Ex.P18 (MO) and one thread (dora) of red colour

Ex.P19(MO). Then on opening of another parcel bearing seal of FSL, it was found containing clothes i.e. Suit Ex.P20(MO), Salwar Ex.P21(MO), underwear Ex.P22(MO) and a vest Ex.P23(MO). Then he also deposed that abovesaid ornaments and the clothes are the same which were removed from the dead body of Madna Devi.

PW-9, Manoj Kumar SI/SHO was Investigating Officer in this case. At the relevant time, he was posted as SHO at Police Station Bhuna and he recorded statement Ex.P1 of complainant Bhagirath @ Bhagi Ram with regard to present occurrence. He sent ruqa for the registration of the case after making endorsement Ex.P1/A on the said statement of the complainant Ex.P1. Then he visited the spot and conducted inquest proceedings qua dead body of deceased and prepared inquest report Ex.P3. Further he also prepared the rough site plan Ex.P33 of the spot of occurrence after its inspection. Then he also proved the report Ex.P34 as prepared by scene of crime team after inspecting the spot. Then he got the post-mortem conducted on the dead body of deceased by moving his application Ex.P2. Then it was also in his statement that after post-mortem examination, Doctor handed over to him two parcels containing clothes and jewellery of deceased, which were taken into police possession vide memo Ex.P24. Then he also deposed about the arrest of the accused as well as recovery of the dowry articles as per lists Ex.P25 and Ex.P26 which were taken into police possession vide memo Ex.P27. He deposited the case property with MHC.

PW-6 ASI Ramesh Kumar was one of the members of the police party headed by PW-9 SI/SHO Manoj Kumar. He corroborated with the abovesaid statement of PW-9 SI/SHO Manoj Kumar and as such there is

no need to discuss his statement in detail in order to avoid repetition.

PW-11 ASI, Om Parkash proved the FIR Ex.P35 which he recorded on receipt of ruqa Ex.P1/A with regard to present occurrence.

So far as remaining PWs are concerned, their statements are found to be formal in nature.

14. Appellant (accused) as his own witness as DW-2 deposed on the same lines as per his plea taken by him in his statement recorded under Section 313, Cr.P.C.. To the same effect was the statement of DW-1, Sunita wife of Krishan.

15. It is admitted case of the appellant that in the intervening night of 17/18.02.2009 at about 3:00 a.m. he intended to have sex with his wife Madna to which she refused and there ensued some sort of scuffle between them. As a result of this scuffle, Madna fell from the cot and while falling her threads worn in the neck entangled with upper side of leg of the cot, which resulted into her death due to asphyxia. So the appellant had admitted his presence in the house at the time of alleged occurrence. The death of deceased was also caused in his house.

16. Then it was also found mentioned in the statement of DW-1 Sunita, sister of the deceased, that Ram Kishan accused was living separately from the other members of his family for the last about 2 years. So in these circumstances, it was for the appellant to explain as to how his wife Madna Devi had died during night intervening 17/18.02.2009. The explanation given by him that due to some scuffle between him and his wife, his wife fell from the cot as a result of which threads worn by her around her neck got entangled in the upper part of leg of the cot, which consequently resulted into her death due to asphyxia is not found to be

satisfactory and reasonable one. The threads worn by any person around his/her neck as the case may be due to some rituals are not usually so strong and sturdy. If unfortunately such threads are entangled in any hard object, then these can break if some force is used by the person concerned either to put them off or get rid of them in an attempt to save herself or himself, as the case may be.

17. Then PW-2 Dr. Surender Bishnoi in answer to a question put to him in his cross-examination relating to above defence version gave his opinion as under:-

“The possibility of accidental death in this case cannot be ruled out if the thread of neck is entangled in some iron pipe, but there are minimum chances.”

Since the appellant had admitted his presence in his house at the time of alleged occurrence, and that it had also come on the record in the statement of DW-1 that appellant was residing with his wife separately from other members of the family, then under the provisions of Section 106 of the Indian Evidence Act, there was heavy burden upon appellant to spell out the reasons/circumstances pertaining to death of the deceased which in the present case he failed to discharge satisfactorily. Then PW-1 and PW-3 in their respective statements consistently revealed that the appellant was maltreating the deceased since long by raising a demand of ₹1,50,000/- for installing the tubewell. Since she could not fulfil his demand, so she was shunted out from her matrimonial home after giving beatings by the appellant. Then for some time she remained with her parents, who then took her to her matrimonial home on 13.02.2009 and left her there.

Thereafter the present occurrence took place on the night intervening

17/18.02.2009. So in this situation a strong presumption could also be drawn against the appellant as provided under the provisions of Section 113-B of the Indian Evidence Act. Then admittedly, the death of deceased was caused within 7 years of her marriage with the appellant. Her death was also found to be caused otherwise than under normal circumstances.

18. In the light of above discussion, this appeal being meritless stands dismissed and conviction of the appellant for the offences under Section 304-B and Section 498-A, IPC, is upheld.

19. Then as per the affidavit of Mr. Surinder Singh Godara, Superintendent Jail, Central Jail-I, Hisar submitted by learned State Counsel, the appellant has already undergone 8 years, 6 months and 19 days of imprisonment including the period of remission as on 11.10.2015. Ends of justice in this case will squarely meet if the sentence of imprisonment for life for the offence punishable under Section 304-B, IPC, is modified to the extent of imprisonment for the period already undergone by the appellant. Accordingly, the sentence of imprisonment for life for the offence under Section 304-B, IPC, is modified to extent of imprisonment for the period already undergone by the appellant. The sentence imposed upon the appellant for the offence under Section 498-A, IPC, is anyhow upheld. All the abovesaid sentences shall run concurrently. The appellant, if not wanted in any other case, be released forthwith.

15.01.2016
Gaurav Sorot

(S.S. SARON)
JUDGE

(GURMIT RAM)
JUDGE