

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

**Crl. Appeal No. S-1262-SB of 2004
Date of decision : 29.02.2016**

Joginder Kaur & Anr.

..... Appellants

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

**Argued by: Mr. H.S. Gill, Advocate
for the appellant.**

Mr. K.S. Aulakh, AAG Punjab.

ANITA CHAUDHRY, J.

Appellants Joginder Kaur and Kuldeep Singh have laid challenge to the judgment of conviction and sentence dated 20.05.2004 vide which they were held guilty under Section 304-B IPC for the death of Kuldip Kaur. The appellants were sentenced to undergo rigorous imprisonment for seven years.

The facts as culled out from the records be noticed first.

Kuldip Kaur (since deceased) was married to appellant Kuldeep Singh somewhere in the year 1999. Darshan Kaur, who was residing near the house of Joginder Kaur was the mediator. She was Kuldip Kaur's Bua. A son was born to the couple. Kuldeep Singh's other brothers were residing separately. After the death of her father-in-law, the mother-in-law i.e. appellant Joginder Kaur started residing with them. Kuldip Kaur was admitted in the Civil Hospital, Hoshiarpur

at about 10/10:30 am on 21.08.2003 with burn injuries. She was admitted by Darshan Kaur (PW2). SI Prem Singh moved an application (Ex.PD) for getting her statement recorded. At about 12:30 p.m. Mrs. Rajwinder Kaur, Judicial Magistrate reached the hospital and obtained the opinion(Ex.PE) from Dr. Daljit Singh regarding fitness and recorded statement (Ex.PE/2). Kuldip Kaur implicated her husband and mother-in-law. She had disclosed that her son was not at home and mother-in-law poured kerosene oil while her husband caught hold of her arms from behind.

On police request (Ex.PF), Mrs. Rajwinder Kaur, JMJC recorded the statement of Kuldeep Singh, who was also admitted in the hospital with burn injuries. He stated that he was constructing the house, but his wife had objected to it and she set herself on fire by pouring kerosene oil. At that time, his mother was not at home.

On the statement of Kuldeep Kaur, the case was initially registered under Sections 307, 498-A read with Section 34 IPC. The accused were arrested. Joginder Kaur suffered a disclosure and got a plastic can and a match box recovered. Kuldip Kaur succumbed to the injuries on 27.08.2003. Section 304-B IPC was added. Inquest proceedings were carried out. Autopsy on dead body was done by the medical board. On completion of investigations, challan against the accused was filed.

Charge under Section 304-B IPC was framed against the accused, to which they pleaded not guilty and claimed trial.

At the trial, the prosecution examined PW1 Rachhpal

Kaur, mother of the deceased, PW2 Darshan Kaur, *Bua* of the deceased, PW3 Dr. Avnish Sood, PW4 ASI Sham Lal, PW5 Mrs. Rajwinder Kaur, Judicial Magistrate, PW6 SI Prem Singh, the investigating officer of the case, PW7 Dr. Daljit Singh medicolegally examined Kuldeep Kaur on 21.08.2003 and PW8 DSP Charanjit Kumar partly investigated the case and arrested accused Kuldeep Singh on 07.10.2003.

In statements recorded under Section 313 Cr.P.C., the accused denied the prosecution allegations and pleaded false implication. According to them, they had neither harassed, maltreated nor demanded any dowry. Accused Kuldeep Singh took the stand that he wanted to raise construction on the plot but Kuldeep Kaur did not agree. She had a short temper and she set herself on fire. He tried to extinguish the fire and in the process received burn injuries. He had also stated that his mother was not present at the time of incident.

On appreciation of the evidence, the trial Court convicted and sentenced the appellants under Section 304-B IPC in the manner indicated above.

I have heard the learned counsel for the appellants and learned State counsel and have gone through the record carefully.

Learned counsel for the appellants had urged that the case of the prosecution rested solely on the dying declaration, which was discrepant as PW6 SI Prem Singh had found during investigation that kerosene oil was poured by Kuldeep Singh and it was Joginder Kaur who had set her ablaze and as there was

contradictions, the testimonies of PW1 Rachhpal Kaur and Darshan Kumar could not be taken into consideration. It was urged that on account of their relationship, the relatives would be interested. According to him, the prosecution had failed to prove that soon before death, the deceased was maltreated in relation to dowry. He had referred to the statement of PW2 Darshan Kaur to urge that at the time of marriage, no dowry was given and it was highly improbable that there could be any demand later. He had further urged that the deceased was short tempered and she had committed suicide and in a bid of save her, accused Kuldeep Singh received burns. He had referred to **Naresh & Ors. Vs. State of Haryana, 2011(2) RCR(CrI.) 309** and **Gurcharan Singh Vs. State of Punjab 2011(1) RCR(CrI.) 180.**

Learned State counsel supported the judgment of the trial Court. He had submitted that the trial Court had correctly appraised and analyzed the evidence on record and rightly convicted and sentenced the appellants.

Kuldeep Kaur died of burn injuries and this fact is not disputed. PW3 Dr, Avnish Sood had given the cause of death due to extensive burns. Kuldeep Singh's presence in the house is also admitted and he had sustained some burns. It was also not disputed that Kuldeep Kaur died within four years of her marriage. The stand taken by the defence was that she committed suicide in a fit of rage. The case of the prosecution was that it was dowry death and she had been set on fire and soon before her death, she was subjected to cruelty in relation to demand of dowry.

The foundation of the prosecution case rests on the dying declaration (Ex.PE/2) given by the deceased before her death to PW5 Mrs. Rajiwnder Kaur, Judicial Magistrate. The other incriminating evidence is the testimony of Rachhpal Kaur and Darshan Kaur.

The Courts always insist that dying declaration should be of such a nature as to inspire confidence in its truthfulness and correctness. If the Court is satisfied that dying declaration was proper and free from any effect of prompting, and the deceased made a statement which is coherent and consistent, there is no legal impediment in founding the conviction, even if there is no corroboration.

Let us first examine the dying declaration suffered by the deceased. The relevant portion thereof, as reproduced in para No.13 of the judgment of the trial Court reads as under:-

“My mother-in-law (referring to Joginder Kaur accused) poured kerosene oil on me from peepi (small tin) when my husband (referring to the accused Kuldip Singh) held my arms from behind. They both, my mother-in-law and husband were quarreling for having not brought dowry and were remarking that I hail from a poor family. My son at that time was not in the house being away to fields. They both set me on fire because I belonged to a poor family and had brought lesser dowry.”

The deceased specifically accused the appellants for quarreling with her on account of bringing lesser dowry. While reducing the statement of Kuldip Kaur (since deceased), PW5

Rajwinder Kaur, Judicial Magistrate took all cautions. After obtaining the fitness from Dr. Daljit Singh (PW7) she had started recording her statement. The Magistrate analyzed the mental faculty of the deceased by putting certain questions and after satisfying herself about the fitness of the injured, she had recorded her statement. Kuldeep Kaur admitted the statement to be voluntarily and without any pressure. The statement was recorded in the presence of doctor, who had also certified that the patient remained conscious and fit to a desirable level during course of her statement. The Magistrate also made endorsement about her satisfaction as to the voluntariness of the statement made by Kuldeep Kaur. No suggestion had been put either to PW5 Mrs. Rajwinder Kaur or PW7 Dr. Daljit Singh that Kuldeep Kaur was not in a fit condition to suffer the statement. It has come in evidence that relatives of both the sides, village Panchayat had collected in the hospital. Kuldeep Singh, husband of the deceased was also admitted in the same room. Kuldeep Kaur had suffered 80% burns. She had an infant child. It could not be expected that at the last stages when she was on the verge of death she would lie.

In the case of **Kundula Bala Subrahmanyam Vs. State of A.P., 1993(2) SCC 684**, the Hon'ble Apex Court while dealing with the sanctity attached to a dying declaration, held as under:-

“A dying declaration made by person on the verge of his death has a special sanctity as at that solemn moment, a person is most unlikely to make any untrue statement. The shadow of impending death is by itself the guarantee of the truth of the

statement made by the deceased regarding the causes or circumstances leading to his death. A dying declaration, therefore, enjoys almost a sacrosanct status, as a piece of evidence, coming as it does from the mouth of the deceased victim. Once the statement of the dying person and the evidence of the witnesses testifying to the same passes the test of careful scrutiny of the Courts, it becomes a very important and a reliable piece of evidence and if the Court is satisfied that the dying declaration is true and free from any embellishment such a dying declaration, by itself, can be sufficient for recording conviction even without looking for any corroboration.”

In the case of **Laxmi Vs. Om Parkash & Ors., AIR 2001**

(SC) 2383, the Hon'ble Apex Court further held that:-

“The law is well settled: dying declaration is admissible in evidence. The admissibility is founded on principle of necessity. A dying declaration, if found reliable, can form the basis of conviction. A court of facts is not excluded from acting upon an uncorroborated dying declaration for finding conviction. A dying declaration, as a piece of evidence, stands on the same footing as any other piece of evidence. It has to be judged and appreciated in the light of the surrounding circumstances and its weight determined by reference to the principles governing the weighing of evidence. It is, as if the maker of the dying declaration was present in the court, making a statement, stating the facts contained in the declaration, with the difference that the declaration is not a statement on oath and the maker thereof

cannot be subjected to cross-examination. If in a given case a particular dying declaration suffers from any infirmities, either of its own or as disclosed by other evidence adduced in the case or circumstances coming to its notice, the court may as a rule of prudence look for corroboration and if the infirmities be such as render the dying declaration so infirm as to prick the conscience of the court, the same may be refused to be accepted as forming safe basis for conviction.”

Adverting to the facts of present case, as noticed above, the dying declaration was made in a fit mental condition by the deceased. It was recorded by a Magistrate in presence of the attending doctor, who were the independent and disinterested persons. She remained conscious throughout her statement and made the statement voluntarily. She had specifically stated that her husband caught hold of her from behind from arms and her mother-in-law poured kerosene oil on her. This version is strengthened from post-mortem report which reveals that the deceased was having no burns on his back. There is no reason to disbelieve it.

The appellants were charged under Section 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”. 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 appellants was that there was no evidence 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. The contention is meritless.

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, victim was subjected to cruelty or harassment. 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.

Kuldip Kaur had been married for about four years. In the instant case, apart from the dying declaration, the prosecution had examined PW.1 Rachhpal Kaur and PW2 Darshan Kaur, the mother and *Bua* of the deceased respectively. PW1 had stated that after 2-3 months of the marriage of Kuldip Kaur, both the accused started taunting her daughter for bringing less dowry. On the fateful day i.e. 21.08.2003 she spoke to her daughter on telephone at about 7:00 a.m. and Kuldip Kaur told her that Joginder Kaur and Kuldeep Singh were quarreling with her for having brought inadequate dowry. She again called up at 8:00 a.m. and heard the shrieks of Kuldip Kaur asking for help. After sometime, she received call from Darshan Kaur (PW2) who was residing near the house of Kuldip Kaur. Darshan Kaur told her that both the accused had set Kuldip Kaur on fire. She reached the civil hospital Hoshiarpur and found her daughter with burn injuries. She had deposed that her daughter used to tell her that the accused had been harassing her for bringing inadequate dowry.

PW2 Darshan Kaur, was the mediator. She was residing in the same locality. She had stated that after the birth of the child, the accused started demanding dowry from the deceased. Kuldip Kaur was given beatings by the accused and she came to her house and Kuldip Kaur used to narrate her woes and that the accused were demanding money. She had stated at one point of time, Kuldip

Kaur was turned out of the house and on the intervention of Mahila Mandal she was sent back. She further stated that on 20.08.2003 the deceased called her on phone and told that accused were quarreling with her and pressurizing her for bringing dowry and on next day, on hearing the cries, she went to the house of Kuldip Kaur and found her lying with burns. She had disclosed to her that she was set on fire by the accused.

An argument was raised that no dowry was given in the marriage and as such, there was no occasion to demand the same. The argument is fallacious. There cannot be a rule of thumb that the demand of dowry could not be raised after marriage where there was no demand of dowry at the time of marriage. There cannot be any automatic presumption that demand will never be raised after marriage.

The learned counsel for the appellants had laid stress that there is no independent corroboration to the statements of both the witnesses as they are closely related. The contention is again meritless. The statements of PW.1 and PW2 cannot be rejected merely on the plea that they were relatives. It is, but natural, that instance of cruelty, harassment or demand of dowry would only be within the personal knowledge of near relations and they alone could depose about it. Therefore, the statements of the mother and Bua cannot be discarded. I find that there are minor discrepancies in the statements. Witnesses were simple and illiterate and discrepancies minor in nature were bound to occur. Their statements indict the series of incidents forming part of the same transaction which

culminated in the death which was otherwise than under normal circumstances within seven years of marriage.

It is proved by the prosecution that soon before her death she was subjected to harassment and cruelty at the hands of the appellant on account of demand of dowry and all the ingredients of Section 304-B IPC are satisfied. The appellants cannot seek help from the cases referred by them as there it was not proved there that there was any demand.

The trial Court had rightly analyzed the evidence. There is no reason to take a different view.

Consequently, affirming the judgment and order of conviction and sentence of the appellants, the appeal is dismissed. Their bail bonds and surety bonds stand cancelled. The appellants are directed to surrender before the CJM Hoshiarpur within 15 days from today to undergo the remaining part of the sentence. In case they fail to surrender before the Court within the stipulated time, the CJM would take appropriate action in the matter. A copy of this order be sent to the CJM, Hoshiarpur for compliance.

February 29, 2016
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(ANITA CHAUDHRY)
JUDGE