

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

CRA-S-211-SB-2004 (O&M)

Date of Decision: 07.09.2016

Rajinder Kumar

...Appellant(s)

Versus

State of Haryana

...Respondent(s)

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: Mr. Kewal Singh, Advocate with
Mr. Hemant Bassi, Advocate
for the appellant.

Mr. Sanjay Kr. Saini, AAG, Haryana,
counsel for the respondent-State.

ANITA CHAUDHRY, J.

This appeal is against the conviction and sentence of the appellant in FIR No.227 dated 26.08.1998, registered under Sections 306, 304-B, 498-A IPC, Police Station Bhattu Kalan. The trial Court had acquitted the other accused. The appellant alone was sentenced to 7 years' rigorous imprisonment along with a fine of Rs.5,000/- for commission of offence under Section 304-B IPC. In default of payment of fine, he was to further undergo rigorous imprisonment for a period of 2 months. He was also sentenced to 2 years' rigorous imprisonment along with a fine of Rs.1,000/- for commission of offence under Section 498-A IPC. In default of payment of fine, he was to further undergo rigorous imprisonment for a period of 15 days.

Suman was married to appellant Rajinder on 30.03.1997. She died an unnatural death in the matrimonial home on 14.08.1998. No complaint was given by the parents. In the initial proceedings a clean chit was given to the husband and the in-laws and the body was cremated. An application written on 16.08.1998 was presented to the police on 17.08.1998, which was marked to the DSP for inquiry and the FIR under Section 306 IPC was registered on 26.08.1998.

The complainant in the complaint Ex.PA had alleged that they had given sufficient dowry and their daughter was being harassed after one month of the marriage and there were demands of a colour T.V. and a scooter and there was a threat that they would not settle her and they used to beat her and frequently she was sent back. The complainant as per his capacity used to send some time Rs.2,000/- and some time Rs.4,000/- so that she could settle but the maltreatment did not stop. He also complained that he along with his brother had gone to the in-law's house 3 – 4 times to request that he was not in a position to fulfill the demands and they should not maltreat her and they used to agree but after they left, she was beaten and harassed. After about 10 days, he came to village Manawali to condole the death of Ram Sarup, a relative of the accused and went to his daughter's house and requested the father-in-law to treat their daughter properly and was poor man and was not in a position to fulfill the demand. He stated that on that occasion also her daughter told him about the harassment. He received a call at 11:00 AM on 14.08.1998 that his daughter was serious and was being taken to Hisar Hospital and they should reach and when he reached he was told that glucose was being administered and the doctor

had asked for signatures of the father and he had put his signatures and thereafter the accused told him that they would take him inside to meet his daughter but they took him to the mortuary and on seeing the dead body, he fell unconscious and in that condition Vinod (his son) brought him back to the village and his daughter had been set on fire on account of greed and dowry and action should be taken.

The police completed the investigation and filed the challan. Charge was framed under Section 304-B, 498-A IPC against Rajinder. Subsequently, an application under Section 319 Cr.P.C. was moved. The parents and the sister of Rajinder were also summoned and charge was framed again on 21.05.2002.

At the trial, the prosecution examined Doctor P.L. Verma PW-1 who had conducted the postmortem examination. He found burns superficial to moderate severity all over the body covering 100% of the body surface area. Hair on scalp were also singed. Fetus corresponding to 8 months gestation was also found. The cause of death was stated to be extensive burns which were antemortem in nature and sufficient to cause death. The Medical Officer had admitted that Ram Niwas, father of the deceased and Vinod Kumar had accompanied the dead body along with the inquest report. He stated that he had signed each page of the inquest report and Ram Niwas and Vinod Kumar were fully conscious when they identified the dead body at the time of postmortem. He stated that in the inquest report in column no.14 the cause of death was accidental fire, bursting of kerosene stove.

Ram Niwas – PW4 maintained his statement as given in his written complaint to the police. He spoke about the demand and the

harassment and that he could not fulfill the demand. He stated that he received a telephonic message from Gopi Ram, the relative of Ram Sarup that the daughter was serious and was admitted in the hospital and he along with his son went to the Civil Hospital, Hisar and they were told that Suman was admitted in the hospital as she had to deliver a baby and no-one was allowed to enter her room and they sat in the park and after some time Gopi Ram came with some blank papers and he got his signatures saying that it is required by the hospital. After sometime they were taken to the mortuary where the dead body of his daughter was lying and she was in a burnt condition and he suffered a shock and lost consciousness and was left at his house and his son went to village Manawali to inquire into the circumstances under which his daughter had received burn injuries and on return he told him that his daughter has been burnt by the accused as his demand was not fulfilled and he moved application Ex.P10 on the basis of which, case was registered. The witness was confronted with the application Ex.P10 and Ex.D1 where a different statements were made. He stated that he did not mention in his first complaint Ex.P10 (also Ex.PA) or Ex. D1 that his son had gone to village Manawali to make inquiry and was told that his daughter has been burnt. He stated that he had not made any statement to the police in the civil hospital on the day his daughter had died nor his son had made any complaint. He stated that he did not tell the police that Gopi Ram had telephonically informed that his daughter had died. He stated that Gopi Ram had told him that his daughter was ill. He stated that they reached the hospital about 12:00 noon, by then his daughter had died and her body was lying in the mortuary ward. He

denied that he had made any statement that he had verified the cause of the death and it was a accidental fire. He stated that he did not make a statement that his daughter was not having any problem with her in-laws. The witness had brought a original letter Ex.P-15 written by his daughter. The photocopy had been handed over to the police.

The complainant admitted that Rajinder (husband) was a gold smith and was running a jewellery shop and the alliance was settled by Gopi Ram, his brother in law. He admitted that Suman stayed in the matrimonial home for some time and she used to frequently visit them for one or two days and Rajinder used to take her back. He stated that no Biradari Panchayat was held to settle the dispute. The witness volunteered that he requested Gopi Ram to hold a Panchayat but he put of the matter on one pretext or the other. He stated that he did not make any complaint to the police. He stated that he had received one letter from Suman. He stated that he did not attach the copy of the letter with the complaint. He stated that Ram Sarup had died 7 – 8 days prior to Suman's death and he did not join the cremation but his brother had gone to condole the death and they did not bring Suman back that day. He stated that he had not gone to village Manawali to confirm the facts before moving the complaint as he came to know that she was set on fire and it was a rumor in the village.

Chameli – PW5, mother of Suman made a similar statement as made by the complainant.

ASI Gulshan Kumar – PW6 deposed that he received a wireless message that Suman w/o Rajinder was admitted in civil hospital with burn injuries and he along with other constable had gone

to the civil hospital and had moved application Ex.P-7 to the Medical Officer regarding her fitness but the Medical Officer made a report that Suman had expired at 11:30 AM and he collected the Ruqa and went to the dead house where the body was lying and he recorded the statement of Ram Niwas Ex.D2 and made an endorsement and sent the same through the Constable to the police station for recording the Daily Diary Report and thereafter prepared the inquest report and sent the body for postmortem. He stated that he recorded the statement of Vinod, brother of the deceased and Rameshwar during the inquest proceedings and the joint statement of 15 persons who were present and the body was handed over to the in-laws vide receipt Ex.P-18. In the cross-examination he stated that he had reached the hospital at 2:45 PM and Ram Niwas was fully conscious at that time and relatives of both the sides were present and he had correctly recorded the statement without any addition or omission and the statement was signed by Ram Niwas. He stated that he did not obtain the signatures of Ram Niwas on blank papers directly or through Gopi Ram.

Chet Ram – PW7 had partly investigated the case.

Hardev Singh, retired ASI - PW8 went to the spot and took into possession the kerosene stove. He had recorded the statement of some witnesses. He stated that he did not record any supplementary statement of Ram Niwas to seek clarification regarding Ram Niwas's statement made to ASI Gulshan Kumar in the inquest proceedings.

In the statement recorded under Section 313 Cr.P.C., the accused pleaded innocence. He stated that Suman caught fire accidentally while working on the stove and Ram Niwas and his family members

were informed and they came to Hisar in the hospital. They were satisfied with the cause of death of Suman and voluntarily made a statement to the police and thereafter, the body was cremated and after two days they demanded marriage expenses which they refused and a false case was registered.

The trial Court accepted the statement of the witnesses and recorded the conviction of only the husband.

I have heard the submission of both the sides.

The counsel for the appellant had urged that a statement was given by the father and the brother during the inquest proceedings which had been proved by the Investigating Officer and the inquest proceedings are signed by the doctor and both the father and the brother had made a statement that he did not suspect anything and it was an accident and he did not want any action and the body was cremated but three days later a complaint was given and allegations of demand of colour T.V. and scooter were made. It was urged that a false claim was made that the father fell unconscious and was carried to his village in the same condition. It was urged that there was no evidence of cruelty soon before death and at the trial the prosecution failed to examine the son and vague allegations have been made and it was not a case of stove burst but the stove was overfilled and the girl was filling kerosene and caught fire and it was an accident. It was urged that the parents had reached the hospital at 12:00 noon and the death had taken place earlier. It was urged that the body was handed over to the in-laws for cremation and the prosecution has not been able to prove the essential ingredients.

On the other hand, the State counsel supported the judgment and it was urged that the unnatural death has taken place in the matrimonial home within 7 years of the marriage and the girl was 8 months pregnant and a letter

had been written by the girl which has been proved by the father and she has spoken about some tiff.

Section 304-B defines dowry death and to record a conviction, the prosecution has to establish the following ingredients:-

- (i) The death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances;
- (ii) Such a death must have occurred within seven years of her marriage;
- (iii) Soon before death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband;
- (iv) Such cruelty or harassment must be for or in connection with demand of dowry;
- (v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

Section 113B of the Evidence Act is also relevant. Section 113B of the Evidence Act reads 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 the wording in [Section 113B](#) of the Evidence Act, it is necessary to show that ‘soon before death’ the woman concerned had been subjected to cruelty or harassment “for or in connection with the demand of dowry”.

On proof of the essentials mentioned therein, under [Section 113B](#) of the Evidence Act, it becomes obligatory on the Court to raise a presumption that the accused caused the dowry death.

The expression “soon before death” in [Section 304B](#) IPC and [Section 113B](#) the Evidence Act was considered in *Hira Lal Vs. State (Govt. of NCT) Delhi*; 2003 (8) SCC 80 and the Court in paragraph (9) 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 [pic]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 the 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 or has received the goods knowing them to be stolen, unless he can account for their 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 cruelty or harassment concerned 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.”

The above decision lays 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.

Back to the facts of the instant case, the main evidence is of Ram Niwas and his wife apart from the medical evidence, the statement given by the Investigating Officer and a letter was written by the deceased.

According to Ram Niwas, the girl had been visiting him and had been telling him about the demand and that she was beaten up. Ram Niwas had admitted that he used to send his daughter back with Rajinder. The mother had spoken about the articles given. No doubt the parents have spoken about the demand. The death in this case is after one and a half year of the marriage. The girl was in her 8th month of pregnancy. It is now to be seen whether the prosecution has been able to establish that soon before the death the girl had been subjected to cruelty or harassment on account or in connection with demand of dowry. It is also necessary to notice that the son was present along with the complainant in the hospital. The complainant had

stated that he had fallen unconscious and in that condition he was carried back to his village Siwani and he had sent his son to inquire about the cause of the incident and later he had given the complaint to the police. The prosecution failed to examine the son who was a vital witness in this case. He had been intentionally kept away from the witness box as it would have exposed the falsity.

There are few other circumstances which also need to be noted. The phone call was received by the family at 11:00 AM. The parents reached the hospital about 12:00 noon. The incident had taken place in the morning. The deceased had received 100% burn injuries. She could not have been in a condition to make a statement. The Medical Officer had reported that she had already died by the time the Investigating Officer had reached the hospital post lunch. The inquest proceedings were carried out thereafter. The complainant and his son had made a statement giving the family a clean chit. They had stated that they did not suspect anything and their statements were recorded and were signed. The Medical Officer had also stated that Ram Niwas had identified dead body. Each page of the inquest report was signed by the Medical Officer. The family did not suspect foul play. The body was handed over to the in-laws and the body was cremated the same day but two days later a typed complaint was handed over to the Superintendent of Police and 10 days later the FIR was registered.

On perusal of the letter and on going through its contents, I find that there is hardly anything which refers to any demand or any harassment or any beatings. This letter was written probably a week before the incident. The girl had mentioned that everything was well in their family and she prayed for the welfare of the parents. She had stated that she wanted to come on the

occasion of Raksha Bandhan but there was no-one who could bring her. She also narrated what all was going on in the family of the Jethani and the death in the family. She had also mentioned that some-one should come to take her as her 9th month was nearing. She had mentioned a specific date that somebody should come to take her on 25.09.1998. Some of the wordings towards the end of the letter are not clear but indicates that her parents had not come for the death that had taken place in the family. However, the complainant had stated that he had come to condole the death 10 days before this unfortunate incident. The letter does not indicate anything about the cruelty. The prosecution has not been able to prove that there was harassment or cruelty soon before her death. The complainant and his family had changed their version after three days. The family of the accused were better placed in life. The husband was running a jewellery shop. The father had stated that he was unable to fulfill the demands. I find a lot of contradictions in the two statements given to the police which come out in the cross-examination effected on him. It is difficult to accept that he had fallen unconscious in the hospital and was carried to his village. The Medical Officer and the Investigating Officer have given entirely different account. Neither the Medical Officer nor the Investigating Officer had any reason to support the accused nor any such accusations have been made against both of them. The girl in her last letter had wanted to come home for her delivery and had indicated the date on which she expected her family to come and take her. The tone and tenure of the letter does not indicate anything wrong. I am of the view that the prosecution had failed to prove the last ingredient. The prosecution was obliged to prove the proximity test. There is not an iota of legal evidence to establish that soon before her death she was subjected to

cruelty or harassment for fulfillment of the demand. No complaint was given to the police or to the Panchayat in the one and a half year of the marriage nor any Panchayat was held. The Court below did not minutely consider and scan the evidence in proper perspective and had committed serious and manifest error in arriving at the finding of guilt. I see substance in the contentions of the counsel of the appellant. I am thus of the view that the judgment is unsustainable.

The appeal succeeds and is allowed. The impugned judgment is set aside. The appellant is acquitted.

(ANITA CHAUDHRY)
JUDGE

07.09.2016
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No