

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

CRA-S-1451-SB-2013 (O&M)
Date of Decision: 06.01.2016

Phuman Singh

...Appellant(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. D.S. Pheruman, Advocate
for the appellant.

Mr. K.S. Aulakh, AAG, Punjab,
counsel for the respondent-State.

ANITA CHAUDHRY, J.

1. The appellant was tried by the Additional Sessions Judge in FIR No.39 dated 18.07.2011, registered at Police Station Mehta and was sentenced to undergo imprisonment for a period of 10 years under Section 304-B IPC. Aggrieved with the verdict he has filed this appeal.

2. Delving into the facts first, Balwinder Kaur was married four years prior to the unfortunate incident on 17.07.2011. The couple had a son who was just three years old. The incident took place in the matrimonial home in the late evening.

3. A complaint was lodged by Dharam Singh, father of the deceased on 18.07.2011 at 11:40 AM. He had stated that Balwinder Kaur was harassed soon after marriage and there was demand of money and he had been expressing his

inability to pay. He had mentioned that he had seven daughters and a son and could not give any more amount. Balwinder Kaur came to the village of her parents on 16.07.2011 and told them that she had come to take money and she had been sent for that purpose and it was for constructing the house. The father expressed his inability and Balwinder Kaur returned. The next evening he received a telephone call from Kashmir Singh who was the mediator who revealed the incident. On hearing the news, the family went to Balwinder's house and found her body lying in the cot. There were signs of injury on her body. The complainant alleged that his daughter has been strangled. Postmortem was carried out and it was reported that the death was on account of asphyxia as a result of strangulation which was sufficient to cause death. The FIR was registered under Section 304-B IPC. Later Section 302 IPC was added.

4. Challan was presented. Charge under Section 304-B IPC and in the alternative under Section 302 IPC was framed to which the accused pleaded not guilty and claimed trial.

5. The prosecution examined Dharam Singh, father of the girl PW1; Dhanna Singh PW2 and witness to the extra judicial confession; Sukhdev Kaur PW3, mother of Balwinder Kaur and Karamjit Kaur PW10. They were the star witnesses for the prosecution. Besides this, the prosecution had examined the Medical Officers and the police officials.

6. The accused abjured the trial and pleaded false implication. He did not offer any explanation but offered to produce defence. Later, no evidence was led.

7. The trial Court exhaustively dealt with the evidence and gave a finding that charge under Section 302 IPC was not established. After examining the evidence, the trial Court held the accused guilty under Section 304-B IPC and sentenced him to the punishment mentioned here-in-before.

8. I have heard both the sides at great length.

9. The counsel for the appellant exhaustively referred to the evidence led by the prosecution and urges that at the stage of inquest none of the persons examined by the police had disclosed that there was demand of dowry and the witnesses have indulged in exaggeration before the trial Court and the trial Court had rejected the statement of Karamjit. It was urged that if the relations were strained and the in-laws were asking for dowry, the parents would not have sent the girl back nor the complainant had spoken to the father-in-law of the girl. It was urged that the extra judicial confession is also doubtful. It was urged that another sister of Balwinder Kaur had died in the in-laws' house and it could be a case that would fall at the most under Section 306 IPC. It was urged that the money demanded is said to be for construction of the house which is not a dowry demand and relatives do extend help when the construction is going. As a

last resort, it was urged that the appellant was in custody for over four years and the sentence be reduced to already undergone, if it is held that the case fell under Section 306 IPC. In the alternative, the submission was that there was a child which was being taken care by the father and the sentence can be reduced to seven years.

10. The State counsel supported the judgment and had urged that the death had taken place not under normal circumstances within 7 years of marriage and there were injuries, which prove that the girl had been subjected to cruelty and it was in connection with demand of dowry. It was urged that it is common in this country that the endeavor of the parents is that the girl should settle and thereafter, the girls are sent back and there is evidence to show that the girl was subjected to cruelty soon before death and the appellant had confided before the brother-in-law and had sought his help.

11. 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.

12. 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 woman 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."

13. 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.

14. 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."

16. 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.

17. In the light of the above, the evidence led by the prosecution has to be examined to see whether the Court below was right in convicting the appellant under Section 304B. It is not in dispute that the death has taken place within 7 years of marriage. Balwinder Kaur had died in the matrimonial home. The incident took place some time after dinner on 17.07.2011. The family was informed and the FIR was registered by the father, the next morning. Dharam Singh, his wife and brother had spoken about the demand and that Balwinder Kaur had come to their house on 16.07.2011 and had confided in her parents about the demand being made by the in-laws. The girl went back the same day. The incident occurred on the next day. There were marks of injuries, which prove that the woman was subjected to cruelty and harassment. Since the death is not under normal circumstances as the death is within 7 years of her

marriage, it has now to be seen whether the remaining essentials have been proved by the prosecution.

18. The star witness for the prosecution was the complainant. He had received a call from Kashmir Singh who was the mediator. The complainant had deposed that the deceased had come to the village and had informed her family about the demand. The deceased returned to the matrimonial home and the incident occurred on the next day. The daughter had persuaded her father to pay and had informed her family that her husband was pressurizing her to get money. The complainant had deposed that he had expressed his inability to pay any further amount as he had already spent sufficient amount on the marriage. The complainant was subjected to a lengthy cross-examination. The defence could not elicit any major contradiction in his statement. The statement of the complainant gets support from the statement made by Dhanna Singh. He had stated that Phuman Singh was his co-brother who used to consume liquor and whenever he visited him, he used to advise him to stop taking intoxicants. He stated that Phuman Singh used to beat Balwinder Kaur and when he had gone to see him on 15.10.2011, Phuman was under the influence of some intoxicant and he had proclaimed that he would teach Balwinder a lesson for not meeting his demands. He had stated that he tried to pacify the accused. He had stated that Phuman came to him on 18.07.2011 and told him as to what

had happened the previous night.

From the evidence of the parents and the brother-in-law it emerges that there was a demand and the husband was pressurizing his wife to get money. He used to beat her. It was not an isolated incident of demand of dowry. There is evidence of harassment and cruelty soon before death. The occurrence had taken place within 7 years of marriage and under abnormal circumstances when the husband was home. The husband had got an opportunity to explain as to why the incident had occurred but he chose not to raise any defence. The parents have spoken about the treatment, their daughter was facing. It is a matter of normal course that when a woman is being tortured and harassed, she would not be reticent of the state and would surely inform her family and specially before she takes the extreme step. The prosecution has successfully shown that the deceased was subjected to cruelty in connection with demand of dowry. There is no reason to take a different view.

Faced with this, the counsel for the appellant had prayed for lenient view on the quantum of sentence. It was submitted that there was a young child and with the mother dead, it was only the father who had to take care of the child. It was urged that the appellant had undergone actual custody of 4 years and 26 days.

Considering the circumstances of the case and the fact that the child is only 10 years old, the sentence is

reduced to 7 years. The appellant is presently on bail. He would surrender within a month to undergo the remaining part of sentence. A copy of this order be sent to CJM concerned. In case, the appellant does not surrender, warrants of arrest shall be issued to procure his presence.

(ANITA CHAUDHRY)
JUDGE

06.01.2016
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