

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

**Crl. Appeal No. S-2840-SB of 2012
Date of decision : 06.04.2016**

Tilak Raj

..... Appellant

versus

State of Haryana

... 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. Rahul Vats, Advocate
for the appellant.**

Mr. Surender Singh, AAG Haryana.

**Mr. Vinod K. Kanwal, Advocate for
Mr. Ashit Malik, Advocate
for the complainant.**

ANITA CHAUDHRY, J.

Appellant Tilak Raj has laid challenge to the judgment of conviction and order on sentence dated 05.09.2012 and 07.09.2012 respectively vide which he was held guilty under Sections 498-A and 304-B IPC for having treated his wife Suman with cruelty and causing her death. He was sentenced to undergo rigorous imprisonment for three years and fine of Rs. 5000/- under Section 498-A IPC and ten years with a fine of 10,000/- under Section 304-B IPC. In default of payment of fine, he was to undergo further rigorous imprisonment for six months and one year respectively.

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

Suman (since deceased) was married to appellant Tilak Raj on 07.12.2008. As per prosecution, sufficient dowry as per the status and capacity was given in the marriage, but the husband and the in-laws were not happy. Suman gave birth to two children. On 11.07.2011 an intimation was received by the police about her admission in a Government Hospital, Bhiwani with 100% burn injuries. She was referred to PGIMS, Rohtak and her condition was serious. She succumbed to the injuries on the way. Her father, Rohtash made a statement, Ex.PA to ASI Jagbir Singh narrating therein that husband Tilak Raj, mother-in-law Krishna, sister-in-law Puja, brother-in-law Balram and Ramesh, uncle of husband used to harass and taunt Suman for bringing less dowry and gave beatings to her. A demand of inverter was raised by the husband, which was fulfilled. Demand for cash was also made. He further disclosed that in the morning at about 6/7:00 a.m. he was informed on telephone by Ramesh and Tilak Raj that Suman had set herself on fire. He went to Government Hospital, Bhiwani. He met Suman who disclosed that Tilak Raj had set her on fire by pouring kerosene oil.

The case was registered and investigated. The dead body of Suman was shifted to the hospital for autopsy. The place of occurrence was examined by EASI Jagbir Singh, burnt clothes, burnt clothes, broken bangles, slippers and plastic can containing diesel were taken into police possession. Site plan of the place of occurrence was prepared. During investigation, Puja, Balram and

Ramesh were found innocent and challan was presented only against appellant Tilak Raj and the mother-in-law Krishana.

It is relevant to mention here that during trial an application under Section 319 Cr.P.C. was filed by the prosecution seeking summoning of Puja, Balram and Ramesh, but that was dismissed.

Charge under Sections 498-A and 304-B IPC and in the alternative Section 302 read with Section 34 IPC was framed against the accused. They claimed trial. The prosecution examined ten witnesses in all viz. Complainant Rohtash as PW1; PW2 Jagbir Singh the investigating officer; PW3 Dr. Jitender Singh Chauhan who had examined the accused Tilak Raj on 14.07.2011. He had found simple burns on the fingers and palm; PW4 Dr. Aradhana examined Suman on 11.07.2011 and referred her to PGI; PW5 HC Rajesh Kumar deposed about the deposit of case property with him; PW6 Sham Sunder, brother of the complainant and deposed about the maltreatment given to Suman for bringing in sufficient dowry; PW7 EASI Balbir Singh had deposited the case property with FSL Madhuban; PW8 Dharmender Singh Draftsman had prepared the scaled site plan Ex.PM; PW9 Inspector Sanjay Kumar had arrested the accused Tilak Raj on 28.07.2011 and submitted the final report; PW10 Dr. Sandeep Singh had conducted the post-mortem examination on the dead body of Suman. She was having 100% burn injuries which were ante mortem in nature and sufficient to cause death in ordinary course of nature.

In the statements recorded under Section 313 Cr.P.C., the

accused denied the prosecution case and pleaded false implication. According to them, the deceased caught fire accidentally when she was preparing meals in the kitchen. Tilak Raj tried to extinguish the fire and in the process received burn injuries on his hands.

In defence Ramesh Kumar DW1 deposed that on 09.07.2011 wedding of Puja had been solemnized, which was attended by Suman's brother and cousin. On 11.07.2011 Suman was cooking meals on the first floor and on hearing the noise they rushed to the spot and Tilak Raj tried to extinguish the fire and suffered burn injuries.

The trial Court acquitted Krishna Devi, the mother-in-law and convicted and sentenced the appellant in the manner indicated above.

I have heard the learned counsel for the appellant and learned State counsel assisted by counsel for the complainant and have gone through the record carefully.

Learned counsel for the appellant had urged that the case of the prosecution rested solely on the statement of PW1 Rohtash, the father of the deceased and PW6 Sham Sunder's statement was hearsay and once their statements are excluded from the zone of consideration as they were related and interested witnesses, nothing incriminating had appeared against the accused to connect him with the offence. He further argued that there was no date or time of the alleged demand was mentioned and the prosecution had failed to prove that soon before death, the deceased was maltreated in relation to dowry. He had further urged that the prosecution evidence

was disbelieved so far as co-accused Krishana Devi was concerned and the appellant was entitled to a similar treatment.

Learned State counsel and learned counsel for the complainant supported the judgment of the trial Court. It was submitted that the trial Court had correctly appraised and analyzed the evidence and had rightly convicted and sentenced the appellant.

The case of the prosecution was that it was dowry death and she had been set on fire and soon before her death and she was subjected to cruelty in relation to demand of dowry. The appellant was charged 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. 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.

In the instant case, the prosecution had examined PW1

Rohtash, the father of the deceased. He specifically deposed that after the marriage, the accused started taunting and harassing his daughter for bringing insufficient dowry. She was coerced to bring more dowry. At one point of time, inverter was demanded, which he had given. Still there was a demand of cash. On the morning of 11.07.2011 he received a call from Suman that on the previous night, the husband tried to press her neck due to which she could not speak and pleaded with him to take her back. At about 8:45 a.m., the same day, he received information that his daughter was burnt. On reaching the hospital, he was told by Suman that appellant Tilak Raj had set her on fire. PW6 Sham Sunder also stated that Suman was harassed and maltreated by the accused for bringing insufficient dowry and reiterated the other part of testimony made by PW1 Rohtash. Both the witnesses spoke about the maltreatment and cruelty meted out on the deceased by the accused.

Apart therefrom, the deceased before her death had disclosed to her father that appellant Tilak Raj had set her on fire. The learned counsel for the appellants had laid stress that there is no independent corroboration to the statements of both the witnesses and they are closely related. The contention is again meritless. The statements of PW.1 and PW6 cannot be rejected merely on the ground 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. 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 three years of marriage.

Suman died of burn injuries and this fact is not disputed. PW10 Dr. Sandeep Kumar had given the cause of death due to extensive burns. The appellant has also not disputed that Suman had died due to burn injuries. Her death had occurred otherwise than under normal circumstances within 3 years of her marriage in the matrimonial home. It was cogently proved by the prosecution that soon before her death she was harassed on account of demand of dowry.

The stand taken by the defence that she caught fire accidentally while preparing the meals, is false. No cogent evidence was produced by the defence to show that it was accidental death rather this plea was found contrary to the evidence coming on record as PW2 Jagbir Singh, the Investigating Officer and DW1 Ramesh had admitted that the kitchen was on the ground floor and only a room was there on first floor. There was no occasion for the deceased to go to the first floor for preparing meals. Their stand further falsified from the fact that diesel was detected, which is not a medium used for cooking. The incident took place on the roof and not in the kitchen. The presence of appellant at the time of occurrence is not in dispute. He had only received simple burns that too on the fingers and palm. Had he tried to extinguish the fire, the consequences could have been severe. The defence plea was rightly rejected by the trial Court

As a last resort, learned counsel had urged that the

alleged demand of cash ipso facto was not sufficient to convict the appellant for dowry death and at the most the case falls under Section 306 IPC. He had referred to **Mam Raj and Smt. Anguri Devi Vs. State of Haryana, 2013(4) R.C.R. (Criminal) 845** and **Leela Ram and another Vs. State of Punjab, CRA-S No.2938-SB of 2009**, decided by this court on 14.08.2015.

In the instant case, the prosecution had succeeded in proving that the deceased was harassed in relation to dowry by the appellant and soon before her death she was subjected to cruelty in relation to demand of dowry, while in the cases of Mam Raj and Leela Ram, the cruelty in relation to demand of dowry was not established and independent witness present at the time of occurrence was not examined. Therefore, those cases are distinguishable from the facts of present case.

The trial Court had analyzed the evidence correctly. There is no reason to take a different view. Consequently, affirming the judgment and order of conviction and sentence of the appellant, the appeal is dismissed. His bail bonds and surety bonds stand cancelled. The appellant is directed to surrender before the CJM Bhiwani within a month from today to undergo the remaining part of the sentence. In case he fails 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, Bhiwani for compliance.

April 06, 2016
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(ANITA CHAUDHRY)
JUDGE