

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

CRA-S-No.912-SB of 2002
DATE OF DECISION : 16TH MARCH, 2016

Avtar Chand

.... **Appellant**

Versus

State of Punjab

.... **Respondent**

CORAM : HON'BLE MRS. JUSTICE ANITA CHAUDHRY

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Present : Mr. A.P.S. Deol, Senior Advocate with
Mr. Arshdeep Singh Brar, Advocate for the appellant.
Mr. K. S. Aulakh, Assistant Advocate General, Punjab.

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ANITA CHAUDHRY, J.

1. This appeal is directed against the judgment and order dated 26.02.2002 passed by the Additional Sessions Judge, Nawan Shahar. The appellant was convicted under Section 304-B and Section 498-A IPC. He was sentenced to 10 years imprisonment under Section 304-B IPC and two years rigorous imprisonment with fine of ₹250/- under Section 498-A IPC. Both the sentences were to run concurrently.

2. The prosecution case sans necessary details is, Devinder Kaur was married to Avtar Chand in 1995. She died in an unfortunate incident on 10.03.1999. On the same day her 1 ½ year old child also died. The incident took place in the morning around 9/10 am. The FIR was lodged at 7.30pm by the mother, Gurmit Kaur. The deceased had consumed aluminium phosphide. The mother had alleged that there was a demand of a scooter and she had borrowed

this amount from Jaswinder son of the real brother of her husband and she had paid the amount to the accused. The allegations were that her daughter was beaten up that morning and she and her daughter were poisoned.

3. The investigating agency after collecting the material laid a chargesheet before the competent Court against Avtar Chand and his parents, which in turn committed the matter to the Court of Sessions and eventually it was tried by the Additional Sessions Judge Nawan Shahar.

4. Charge was framed under Section 304-B and 498-A IPC. The accused pleaded not guilty and the trial commenced. During trial Dev Raj father of Avtar Chand died.

5. To substantiate the case before the trial Court the prosecution examined as many as ten witnesses and brought on record certain documents.

6. The accused has taken the plea of false implication. Avtar Chand took the plea that after marriage he had separate mess and residence. He stated that his father was suffering from multiple ailments and he had suffered a hip fracture which required major surgery and he was suffering from eye problem and was a asthma patient. He had stated that he was working as painter at Rahon and his father had approached him for financial help and his wife did not relish and accused him of ignoring his own children. He had stated that on 10.03.1999 he left for work and his parents went to Nawan Shahar to seek medical advice and in their absence Devinder Kaur

administered poison to his daughter and also consumed part of it. He stated that he received information and rushed his wife and daughter to the Civil Hospital from where he was asked to take them to PGI, Chandigarh and on the way both of them died and the bodies were brought to village Malpur. He stated that he along with the Sarpanch went to the Police and informed them of the incident and messenger was sent to inform the mother-in-law. He stated that the circumstances were explained to Gurmit Kaur who was satisfied and later a false case was lodged.

7. In defence the accused examined the Sarpanch. Some documents were also tendered.

8. I have heard Mr. A.P.S. Deol, Senior Advocate for the appellant and Mr. K. S. Aulakh, Assistant Advocate General, Punjab.

9. It was urged that the date of marriage has not been established but from the evidence it has appeared that the marriage was about four years old and the prosecution had projected that the deceased had been administered poison but that fact could not be proved and challan was not presented under Section 302 IPC. It was urged that the only statement on record is that of Gurmit Kaur and it has to be seen whether the statement is enough and whether it inspires complete confidence and whether there was any demand. It was urged that the deceased had two children and the second child had been born only one and half month ago and if there was any demand after the birth of the child it could not be in connection with dowry and it could not be stretched to a demand in relation to dowry.

It was urged that the mother had spoken about the demand made five months earlier and there is no proximate link to draw the presumption under Section 113-B of the Evidence Act. It was urged that the post-mortem report refers to the injuries and they have to explain the injuries. It was urged that the injuries were on the nose and on the face. It was submitted that the deceased was responsible for her own death and that of the child and after killing the child she could not absolve herself and, therefore, ended her life. Explaining the injuries, it was urged that they were old and could be by a fall and the Doctor had given evasive replies. It was urged that no witness had stated that the accused had grappled with the deceased and the injuries could not be imputed to the accused. It was urged that Jaswinder is an interested witness and there are contradictions. It was urged that Devinder Kaur was upset as the husband was helping his parents and was contributing from the little income he had, which the wife did not like. It was urged that the last incident narrated by the mother was 4/5 months earlier and there is no incident soon before death nor there is any evidence that the deceased was subjected to cruelty or harassment and the solitary statement of the complaint is not sufficient to sustain the conviction of the appellants. Reliance was placed upon ***Baljinder Kaur Vs. State of Punjab, 2015(2) SCC 629*** and ***Abdul Jabbar Vs. State of Haryana, 2015(1) Law Herald 483.***

10. On the other hand, learned State counsel supported the judgment of the trial Court and it was urged that all the ingredients had been proved and death had taken place within seven years of

marriage and it was an unnatural death and there were injuries on the body and the prosecution have been successful in establishing the charges and the court below had rightly convicted the appellants and it warrants no interference.

11. The accused have been charged under Section 304-B. Before proceeding further it is necessary to reproduce the relevant Sections.

Section 304-B reads as under:

"304B. Dowry death.- (1) 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 for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation.- For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

12. Parliament has inserted Section 113B in the Evidence Act, which 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.

Explanation.-For the purposes of this section "dowry death" shall have the same meaning as in section 304B of the Indian Penal Code (45 of 1860)"

13. The necessity for insertion of the two provisions has been amply stated by the Law Commission of India in its 21st Report dated 10-8-1988 on "Dowry Deaths and Law Reform".

Keeping in view the impediments in the pre- existing law in securing evidence to prove dowry-related deaths, the Parliament in its wisdom thought to insert a provision relating to presumption of dowry death on proof of certain essentials.

It is in this background that a provision of presumptive evidence by way of Section 113B in the Evidence Act has been inserted. As per the definition of "dowry death" in Section 304B IPC and the wording in the presumptive provision of Section 113B of the Evidence Act, one of the essential ingredients, amongst others, is that the `woman' must have been "soon before her death" subjected to cruelty or harassment "for, or in connection with, the demand for dowry".

Presumption in terms of Section 113B is one of law. On proof of the essentials mentioned therein, it becomes obligatory on the court to raise a presumption that the accused caused the dowry

death. The presumption shall be raised only on proof of the following essentials:

(1) The question before the court must be whether the accused has committed the dowry death of a woman. (This means that the 10 presumption can be raised only if the accused is being tried for the offence under Section 304B IPC).

(2) The woman was subjected to cruelty or harassment by her husband or his relatives.

(3) Such cruelty or harassment was for, or in connection with, any demand for dowry.

(4) Such cruelty or harassment was soon before her death.

14. A conjoint reading of Section 304-B of IPC and Section 113-B of the Evidence Act shows that in order to prove the charge of dowry death, the prosecution has to establish that the victim had died within 7 years of marriage and she was subjected to cruelty or harassment soon before her death and such cruelty or harassment was for dowry. Therefore, in each case, the Court has to examine and analyze the facts and circumstances leading to the death of the victim and decide whether there is a proximate case between the demand of dowry and the act of cruelty or harassment.

15. The cause of death was deferred by the Medical Board which had conducted the post-mortem examination and on receipt of the chemical examiner's report it had given its opinion that the cause of death was the result of aluminium phosphide, a pesticide found in the viscera by the chemical analyst. It is now not in dispute that

Devinder Kaur and her daughter died due to consumption of pesticide.

16. It is necessary to refer to the statement made by Gurmit Kaur (PW-3). She stated that her husband was in Dubai for the last 22 years and her son was away to Lebanon for the last 9 months. She stated that her daughter was married to Avtar Chand about four years back and she had two children and the eldest daughter was 1 ½ years old. She stated that her mother-in-law, father-in-law and husband used to give her beatings and thereafter sent her home and she used to give whatever she could according to her financial capacity and the accused were demanding scooter and cash. She stated that her daughter was sent home about 4/5 months prior to her death after she was beaten up and she borrowed a sum of ₹5,000/- from the son of her *Jeth* and he accompanied her to the matrimonial home of her daughter and they left their daughter and handed over the amount. Jaswinder paid the amount to Avtar Chand. She stated that she was inside the house at that time it was paid. She stated that she along with two other persons had gone to Village Malpur on 10.03.1999 and they were present at the bus stand when she came to know that her daughter was poisoned to death and thereafter she went to the police station and met Baldev Singh and the FIR was lodged. She stated that she reached Rahon at 6.45 pm. And within half hour she had reported the matter. She had also stated that Jaswinder was running a travel agency in Chandigarh and was living in Chandigarh for the last ten years. She stated that no complaint in

writing or otherwise was made to the police nor any Panchayat was ever held nor her daughter was ever got medically examined. She stated that no respectable person had ever accompanied her to Village Malpur nor she had spoken to any of the neighbours of the accused.

17. Sohan Lal PW-4 had accompanied Gurmit Kaur to the matrimonial home of the deceased. He stated that all the accused were in attendance in the house and they remained present till their departure.

18. Jaswinder Kumar PW-6 stated that he was dealing in real estate and was exporting leather goods and had his business in Chandigarh. He stated that Devinder Kaur was the daughter of his father's younger brother and she had been married to Avtar Chand some time in 1996. He stated that a son and daughter was born to the couple but he did not remember their names. He stated that accused were not satisfied with the dowry and used to beat her and there was demand of scooter and money and Devinder Kaur had conveyed it to her mother. He stated that a month before death he accompanied his *Chachi* to the house of the deceased and paid ₹5,000/- to Avtar Chand. He stated that his *Chachi* has borrowed this amount from him. In the cross-examination he could not give the month or the date when he had accompanied the mother of the deceased. He stated that he had not even told this fact to the police that he had gone with her. He could not even say whether he had visited the matrimonial home of Devinder Kaur 4-5 months before her

death or 7-8 months before the death. He stated that he could not even tell by guessing the time of his visit. He stated that he received information about the death at 7pm that evening and he did not go to village Malpur, but had gone to Civil Hospital, Nawan Shahar along with his father. He stated that he had not yet gone to village Malpur.

19. Besides the above, the prosecution had examined Dr. Naresh Mittal, who had conducted post-mortem. He had noted the following three injuries:

- i. An irregular abrasion measuring 2.5 cm x 2 cm present over the right side of cheek, just below right lateral canthus of eye. It was brownish black in colour.
- ii. Irregular abrasion 1.5 cm x 1 cm. present over the base of nose towards the right side.
- iii. Lacerated wound 1 x 0.2 cm in the middle of the nose surrounded by abrasion of the size of 4 cm. x 1.5 cm.

20. The Medical Officer has stated that the cause of death was deferred and report of Chemical Examiner was awaited and on receipt of the Chemical Examiner report he had given the report that the death was a result of consumption of aluminium phosphide. He stated that he also carried out post-mortem examination on the child. The cause of death was consumption of aluminium phosphide. With respect to the injuries he had stated that when the injuries are fresh, the colour would be red and the redness would continue for the first 18 hours and thereafter it would change to blue and then it would turn brownish black. He stated that injury No.1 noted on the cheek

Devinder Kaur was brownish black in colour and the duration could not be less than 18 hours.

21. From the evidence it becomes clear that the complainant's husband and son were working abroad. They were not cited as witness which means that either the relation between the complainant and her husband were not good or nothing has been conveyed to the father by the girl, therefore, he did not return to make a statement to the police. We thus have the solitary statement of mother, who no doubt had stated that her daughter was beaten up. She had also stated that there was a demand of scooter and cash. She had stated that her daughter had been sent back 4-5 months prior to her death. She had also deposed that she had borrowed ₹5,000/- from son of her *Jeth* and he accompanied her when the payment was made to Avtar Chand. A perusal of the statement of Jaswinder shows that he had probably not visited the house of the deceased ever, he did not even know the name of the children of Devinder Kaur. Had he been close to the family, he would have known their names. Jaswinder was introduced just to lend support to the statement of Gurmit Kaur. Gurmit Kaur did not have ₹5,000/- with her. Avtar Chand and his family were labourers and belonged to the lower strata of the society. Probably the complainant side also belonged to the same strata.

22. It is clear that the death was on account of consumption of aluminium phosphide. There were no fresh marks of injuries. The Medical Officer had stated that injuries noted by them could not within

18 hours of the death. The injuries noted by them were on the face, nose and it could be by fall and cannot be connected to the unfortunate incident.

23. The accused have been charged under Section 304-B IPC and for that the prosecution was to lead evidence to show that soon before the death the women was subjected to cruelty and harassment in connection with demand of dowry. A child was born to Devinder Kaur about 2 months prior to the incident. Gurmit Kaur stated that amount was paid about 4-5 months prior to the incident. The prosecution has been unable to lead evidence to show that soon before the incident, some occurrence had taken place or there were some demand. Evidence in that regard is missing. The complainant did not get any panchayat convened nor the matter was reported to the police. If the girl had been beaten up there would have been some panchayat or some report to the sarpanch/panchayat members.

24. I find that there is no evidence that the girl was subjected to cruelty in connection with demand of dowry. The defence raised by the accused appears to be more probable. The family was facing financial constraints. The father of Avtar Chand was suffering from various ailments and money was required for his treatment. The son was contributing which was not acceptable to Devinder Kaur and it could be that it was causing lot of stress to her and unable to take the strain and she put an end to her miseries by first poisoning her child and then taking her own life.

25. The prosecution had been unable to show the existence of a proximity and live link between the effect of cruelty based on dowry demand and the death concerned. Therefore, there is force in the submission of counsel for the appellant. There is no evidence that the deceased was treated with cruelty or harassment in connection with demand of dowry soon before her death. The net result is that the conviction of the appellant cannot be sustained and is set aside.

26. The appeal is accepted.

16th March, 2016
'raj'

(ANITA CHAUDHRY)
JUDGE