

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

**CRA-S-2265-SB-2003 (o&M)
Date of Decision: 14.03.2016**

Ashok Kumar and others

...Appellant(s)

State of Punjab

...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. D.S. Pheruman, Advocate
for the appellant(s).

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

ANITA CHAUDHRY, J.

The appellants were sentenced to undergo rigorous imprisonment for a period of 10 years for commission of offence under Section 304-B IPC. They were further sentenced to undergo rigorous imprisonment for a period of 2 years for commission of offence under Section 201 IPC along with fine of Rs.1000/-. In default of payment of fine, they were to further undergo rigorous imprisonment for a period of one month.

The facts as they appear from the record may now be exposited. Poonam was married to Sanjeev in October, 1997. The unfortunate incident took place in January, 1999. The allegations were that the husband, mother-in-law, father-in-law, the brother-in-law and the sister-in-law and other family members maltreated the deceased for bringing insufficient dowry. The girl was being sent to the matrimonial home on that pretext. In March, 1998 Poonam returned home and told her family about her sufferings. She again went back to the matrimonial home after her mother and brother counselled her. On 01.04.1998, the complainant along with her sister-in-law went to village Dostpur. The family did not treat the complainant and her sister-in-law properly and accused them of giving insufficient dowry. Poonam was brought back to the parents' house. On 31.05.1998, a Biradri Panchayat was held and Poonam was sent back to the matrimonial home. She again returned to Gurdaspur and narrated her woes. She was sent back after two days. Poonam was expecting a child and her date of delivery was near. The allegations are that the in-laws were asking her to have the delivery at her mother's house. The girl returned to the family. She gave birth to a child in

October, 1998. The child fell ill and the complainant's family bore the entire expenditure. None of the in-laws' family came to visit her. After about 2 – 3 months, the in-laws came and wanted to celebrate the Lohri function and asked the complainant to send Poonam. Poonam went back to the matrimonial home along with her new born child. After the Lohri function, taunts were thrown at the girl for the gifts given. On 22.01.1999 the complainant was in the market when she heard that her daughter had been killed. Information was also received that the dead body had been cremated without informing her. Information was given to the police and a report was lodged. On receipt of the information, the police went to the cremation ground and found that the body had been cremated. The police collected the ash and bones and sent it to the Chemical Examiner. The police presented the challan against six persons. Charge was framed under Section 304-B, 201, 120-B IPC, to which they pleaded not guilty. The prosecution examined six witnesses.

The accused in their statements recorded under Section 313 Cr.P.C., took the plea that Poonam had fallen ill on 21.01.1999 and she was taken to a local government dispensary but the doctor was not available and she was

being taken towards Kalanaur for medical treatment but she died on the way and it was a natural death and they brought the body back and message was sent to the mother. The mother had attended the cremation along with the local villagers and she did not make any allegation then but later in consultation with her relatives false allegations had been made in the FIR.

In defence, the accused had examined eight witnesses.

The trial Court convicted the husband, the mother-in-law and the father-in-law to the sentence mentioned herein-before.

Aggrieved with the judgment, the appellants have filed this appeal.

The counsel for the appellants had urged that the girl had fallen ill and was taken to the hospital and an entry was made in the register which had been proved by the defence witness but since there was no doctor, she was taken to Kalanaur but she died on the way and they returned and they informed the mother and she had attended the cremation. It was urged that the bones and ashes were sent for chemical examination and the forensic report showed no

poison. It was urged that in order to invoke the provisions of Section 113-B of the Evidence Act, all the ingredients should be made out and there is no evidence that there was any demand or cruelty soon before death. It was urged that the mere fact that she was young would not lead to the fact that she died a unnatural death. Reliance was placed upon ***Gurdeep Singh Vs. State of Punjab and others 2011 AIR (SC) 3616***. It was urged that the parents were not involved and if there involvement was found then the father was 80 years old and had undergone three years and six months of custody and the mother was 71 years of age and had undergone over one and a half year of custody and lenient view be taken.

On the other hand, the submission was that the father of the girl had died years ago and the husband was in the Police Department and a document was produced that he was on leave on 20.01.1999 and joined duty at 9:30 A.M. on 21.01.1999 but he did not say that he was at his office. It was urged that the defence witness had stated that the girl was not ill. It was urged that the accused owed an explanation how the girl had died and the entry was made in a register which does not mention the disease and no

postmortem was got done and the girl was hurriedly cremated without informing the mother and the family members have spoken about the various demands, cruelty and the harassment the girl was undergoing. It was urged that the death was within 7 years and it was unnatural and the girl was subjected to cruelty and harassment by the husband and the parents and the presumption under Section 113-B of the Evidence Act was rightly invoked.

At the outset, it would be appropriate to refer to the essential ingredients of Section 304-B and Section 113-B respectively contained in the Indian Penal Code and the Evidence Act.

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."

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)"

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.

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.

The prosecution in order to prove its case had examined Santosh Kumari, mother and one of her aunts Shanta PW-2. Both of them largely reiterated the story set

out in the First Information Report. The complainant had mentioned that she had heard in the market that her daughter had died and had been cremated and she had not been informed. Admittedly, there is no postmortem report. None of the witnesses have stated that the deceased was suffering from any ailment or that she was taking any treatment. The deceased was never admitted in the hospital. The defence had produced a certificate of a government dispensary to show that she was taken to the dispensary on that day. Only her name, her age and the village to which she belong is mentioned. No doctor had examined her. According to the defence witness, the victim fell ill and was taken to the Primary Health Centre and since there was no doctor, they had taking the girl to Kalanaur but she died on the way and she was brought back. The evidence reveals that the girl was taken to the Primary Health Centre around noon. The time of cremation has not been given by the defence witnesses.

The husband of the victim is a Constable with the Police Department and his stand was that it was a natural death and the mother had been informed by one of the accused and the mother had attended the cremation.

The trial Court held that sufficient evidence had been produced by the prosecution to prove that the girl was subjected to harassment and torture and was being treated with cruelty immediately after the marriage till her death because she did not bring sufficient dowry and there were constant demands. The trial Court had also noted that the defence could not produce any evidence to prove that they had informed the police about the death. No reason was given why no postmortem was conducted. It had also observed that they had not informed the mother of the deceased. In the opinion of the trial Judge all this was sufficient to prove the charges even of destroying evidence.

A critical analysis of the facts and evidence that has been brought on record shows that the prosecution has succeeded in proving that the deceased had died within one and a half year of the marriage in the matrimonial home. Her mother and aunt had categorically stated that the girl was subjected to harassment and cruelty and how the harassment continued. The deceased had been visiting her family when she was sent back home on various occasions.

The husband of the deceased is a Constable in the Police Department. He would have known that the

postmortem was necessary. There is no evidence that any treatment was given to the girl. There is no explanation as to why the family was in a hurry to cremate her. The disposal of the dead body in hush-hush manner clearly establishes that the accused had done so with the sole object of concealing the real cause of death.

In my view, this was a fit case for invoking Section 106 of the Evidence Act which lays down that when any fact is especially within the knowledge of any person, the burden of proving the fact is upon him. In ***Ram Ghulam Chaudhary Vs. State of Bihar 2001(8) SCC 311***, the Apex Court had considered the applicability of Section 106 of the Evidence Act. It was observed therein that even though Section 106 of the Evidence Act may not be intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt but the Section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the death. The accused by virtue of their special knowledge were expected to offer an explanation which might lead the Court to draw a different inference.

In State of ***Rajasthan v/s Jaggu Ram, in Crl. Appeal No.1133 of 2000***, decided on 04.01.2008, the Apex Court set aside the judgment of acquittal of the High Court while noting the observations of the Apex Court in *Trimukh Maroti Kirkan Vs. State of Maharashtra 2006(1) SCC 681* and observed as follows:-

“In *Trimukh Maroti Kirkan vs. State of Maharashtra* [2006 (1) SCC 681], a two judge-bench of which one of us (G.P.Mathur,J.) was a member, considered the applicability of [Section 106](#) of the Evidence Act and observed:

The demand for dowry or money from the parents of the bride has shown a phenomenal increase in the last few years. Cases are frequently coming before the courts, where the husband or in-laws have gone to the extent of killing the bride if the demand is not met. These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence. No member of the family, even if he is a witness of the crime, would come forward to depose against another family member. The neighbours, whose evidence may be of some assistance, are generally reluctant to depose in court as they want to keep aloof and do not want to antagonise a neighbourhood family. The parents or other family members of the bride being away from the scene of commission of crime are not in a position to give direct evidence which may inculcate the real accused except regarding the demand of money or dowry and harassment caused to the bride. But, it does not mean that a crime committed in secrecy or inside the houses should go unpunished.

*If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. (See *Stirland v. Director of Public Prosecutions* [1944 AC 315] quoted with approval by Arijit Pasayat, J. in *State of Punjab v. Karnail Singh* [2003 (11) SCC 271]. The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind [Section 106](#) of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.*

The victim had died within two years of marriage.

The police had collected the ashes and the bones from the cremation ground. The Forensic Experts did not find any poison. The fact that the FSL report did not show any traces of poison by itself is not a ground for acquittal. I have gone through the judgments referred to by the appellants. I find that the facts there are distinguishable. In the present case, the mother has spoken about various episodes of cruelty and harassment and of demand. In *Gurdeep Singh's* case (*supra*) the Court had found that in the statement recorded under

Section 161 Cr.P.C., the witnesses had stated that they were indeed present when the cremation had taken place. The Court had found that there were contradictions in what was narrated in the Court and the case also failed the proximity test and therefore the appeal was allowed.

In the case in hand, all the ingredients are found proved. The presumption under Section 113-B of the Evidence Act would be applicable. The onus had shifted to the defence which they had miserably failed to discharge. The Sarpanch of the village had admitted that the girl was not suffering from any disease. She was not ill, therefore, the onus became heavier.

As a result of the cumulative discussion above, the appeal fails and is dismissed. There is no scope for reduction of the sentence. The appellants are on bail. They are directed to surrender within three weeks from today, failing which the Chief Judicial Magistrate, Gurdaspur would issue warrants to procure their presence and commit them to custody.

A copy of the judgment would also be sent to Chief Judicial Magistrate, Gurdaspur.

14.03.2016

sunil

(ANITA CHAUDHRY)
JUDGE