

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Appeal No. S-670-SB of 2002

Date of decision : 10.02.2016

Kaushal Dev and another

..... Appellants

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?
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the digest?

**Present: Mr. D.V. Sharma, Sr. Advocate with
Ms. Shivani Sharma, Advocate
for the appellants**

Mr. Surender Singh, AAG Haryana

ANITA CHAUDHRY, J. (ORAL)

Kaushal Dev and his mother Narvada were tried in FIR No. 178 dated 03.12.2000 registered under Section 304-B, 498-A at Police Station Hassanpur. The trial ended in their conviction and they were sentenced to undergo rigorous imprisonment for 7 years alongwith fine of Rs. 1000/- each and in default of payment of fine to further undergo rigorous imprisonment for 3 months and under Section 304-B. They were also sentenced to undergo rigorous imprisonment for 2 years alongwith fine of Rs. 500/- each and in default of payment of fine to further undergo rigorous imprisonment for 2 months by Sessions Judge, Faridabad on 11.07.2002.

Both the convicts filed this appeal in 2002. Narvada – appellant No. 2 died during the pendency of the appeal. The appeal against her had abated.

Dev on 9.12.98 at Alwar in a group marriage function performed by Akhil Bhartiya Mahavar Vaishya Yuvak Yuvati Parichaya Sammellan Avam Samuhik Vivak Samiti. About 30 couples were married by the organization. The unfortunate incident occurred on 02.12.2000. The FIR was lodged the next day. The complainant Sri Ram had alleged that he had given dowry on the marriage as per his capacity and after 2/3 months of the marriage his daughter had told him on telephone that the mother-in-law and sister-in-law used to harass and taunt her for bringing insufficient dowry. The complainant and his wife went to Hassanpur and met their daughter and after persuading the in-laws they returned. The complainant's daughter gave birth to a son in February 2000. The complainant had stated that he had given Chhuchhak as per his capacity but the mother-in-law, sister-in-law and the son-in-law were not happy. He had also given Indira Vikas Patras of Rs. 5000/- in the name of his daughter and son-in-law. The father had alleged that there was a demand of a motor cycle and he had told them that he did not have the capacity to pay. The allegations were that on 02.12.2000, he received information on telephone from his son-in-law that Renu had committed suicide by sprinkling kerosene oil upon herself. The complainant alongwith his wife and sons went to Hassanpur where they came to know that Renu had been referred to Safdar Jung Hospital, Delhi. On getting this information they left for Delhi. While they were near village Khambi, he met his son-in-law and his brother-in-law who told him that Renu had died near Palwal and they were returning to Palwal. Allegations were levelled that his daughter had been murdered by the husband, mother-in-law and sister-in-law for dowry. On these allegations the matter was investigated and challan was filed against the husband and the mother-in-law. Charge was framed under Section 304-B, 498-A IPC to which the accused pleaded not guilty.

The prosecution examined the complainant, the Medical Officer

and the police officials. Two other relatives examined by the police were given up. The accused pleaded false implication. By way of defence they had examined Dr. Sanjeev Bhagat and the Registration Clerk to prove the registration certificate of the motor cycle.

The then Sessions Judge, Faridabad held both the appellants guilty and sentenced them to punishment mentioned herein before.

Learned counsel appearing for the appellants had submitted that the conviction of the husband is liable to be set aside as the trial Court did not consider the fact that it was a community marriage and such marriages are performed by the family who are unable to pay for marriages of their children and no dowry is given in such marriages and the organization only hands over gifts and there is no evidence that they have ever raised demand of motor cycle. It was urged that the husband owned a motorcycle and they had summoned the Registration Clerk who had produced the registration certificate of the motor cycle. It was urged that there is a delay in lodging the FIR and the family had reached and they had participated in the cremation and there are photographs showing their participation but on the next day the FIR was got registered. It was urged that there was no demand at the time of the marriage nor any dowry was given and the complainant was in service and getting a salary of Rs. 2000/- and with his poor financial position he could not have given anything and as per his own saying he had spent about Rs. 4000-5000/- on the marriage. It was urged that the Vikas Patra is in the name of the daughter and not the son-in-law and the witnesses have tried to exaggerate on every aspect. It was urged that the complainant had given a complaint which was torn by the police and subsequently the statement was given on 03.12.2000 at 5.30 p.m. and the special report reached the Magistrate at 9.20 p.m. It was urged that the death was not on account of dowry and the Medical Officer had recorded the statement of the girl which

the prosecution did not place before the Court and they had examined the doctor and had proved the statement given by her. It was urged that girl was under the influence of some spirits that is why she set herself on fire and she had not blamed anyone for this incident and if there had been a demand the family would not have been present with them in the cremation. It was urged that the complainant had made a wrong statement that they had a telephone in their house and he could not supply the phone number as it did not exist. It was urged that the husband had taken the girl to the hospital. It was urged that the girl was dead by that time and had been referred to Safdar Jung Hospital, Delhi around 7.00 p.m. and she was brought dead to the same hospital at 10.30 p.m. as the girl had died on the way to Safdar Jung Hospital. It was urged that there was no evidence that the girl was subjected to cruelty or harassment soon before her death and the essential ingredients were not proved. Reliance was placed upon ***Sher Singh @ Partapa vs. State of Haryana, 2015(2) SCC(Cri) 422, Bakshish Ram and another vs. State of Punjab, 2013(4) SCC 131, Baljinder Kaur vs. State of Punjab, 2015(2) SCC 629, Harjit Singh vs. State of Punjab, 2006(1) RCR(Criminal) 133, Biswajit Halder @ Babu Halder vs. State of West Bengal, 2007(2) RCR(Criminal) 395, Durga Prasad vs. State of M.P., 2010(3) RCR(Criminal) 219, State of Haryana vs. Suresh Kumar, 1977(4) RCR(Criminal) 183, State of Orissa vs. Niranjan Mohapatra, 2005(9) SCC 578, Kamesh Panjiyar @ Kamlesh Panjiyar vs. State of Bihar, 2005(1) RCR(Criminal) 133.***

Responding to the submissions it was urged that the trial Court had dealt with the so called dying declaration and had doubted the statement of the doctor who had recorded the same and had noted that there was a cutting in the time indicated therein and the police and the Medical Officer were under the influence of the husband. It was urged that death had

occurred within seven years of marriage and the girl had been speaking to her parents and informing them about her condition and the basic essentials for establishing Section 304-B IPC were proved and the presumption under Section 113 B of the Evidence Act were rightly drawn. The State counsel supported the judgment.

It is not disputed that the marriage between Renu and Kaushal Dev was solemnized in a community marriage organized on 09.12.1998. The couple had son who is now with the in-laws. The complainant had alleged that he had given dowry at the time of the marriage but he failed to give the details of the articles which were handed over. It is difficult to accept that he would have given any dowry. Admittedly, there was no demand of dowry at the time of the marriage. Renu was brought to the hospital by the family at 6.35 p.m. She was referred to Safdar Jung Hospital at 7.35 p.m. She was brought back to the same hospital on 10.30 p.m. and was declared brought dead.

Rukka had been sent by the hospital on her admission and the Investigating Officer had moved an application Ex. DA and the Medical Officer had given his report that she was fit to make a statement. The time indicated therein is 6.45 p.m. Since there was an overwriting on the minutes, therefore, the time has been indicated in words also. Renu had made a statement Ex. DC. She had given details of her marriage and about birth of a child and the manner in which the incident had occurred. She had stated that at about 3.00 p.m. she was sleeping in her house and about 4-5 months earlier there was a death in the neighbourhood and she was getting dreams that some body was calling her and that dead person had sprinkled oil on her and had set her on fire. The names of her husband, the mother-in-law and the father-in-law were mentioned and she had stated that they were not to blame. The statement given by her reads as under:-

"I was married two years ago, I have a son named Guddu aged 10 months. Today at about 3.00 p.m. while I was sleeping a person named Baddal, who was living in our neighbourhood and had died about 4/5 months ago came in my dream and he called and took me towards Chini ki Kothri. I am resident of Alwar Jubleevs Scheme No. 2. Deceased Baddal sprinkled kerosene oil on me and set me ablaze. My husband Kalua, mother-in-law Narvada and father-in-law Ghasi are not at fault and that no one harasses me in the house. I am living properly. I have set myself on fire under the influence of evil spirit."

Renu had died on account of extensive burns. The death was not under normal circumstances and it was within seven years of marriage. It is now to be seen whether the prosecution has been able to prove all the ingredients beyond reasonable doubt so as to attract the presumption under Section 113 B of the Indian Evidence Act. Before that it is necessary to reproduce the relevant Sections.

Section 304 IPC relates to dowry death and reads as follows:-

"304 B. 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.*"

The basic essentials required to be established under Section 304B IPC are : (i) The death of a woman was caused by any burns or bodily

injury or otherwise than under normal circumstances; (ii) Such death have occurred within seven years of her marriage; and (iii) Soon before her death she was subjected to cruelty or harassment by her husband or any relative or her husband.

Section 113 B of the Indian Evidence Act reads as follows:

“113 B. Presumption as to dowry death: When the question is whether a person had 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.”

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

- (i) the question before the Court must be whether the accused had committed the dowry death of a woman;*
- (ii) The woman was subjected to cruelty or harassment by her husband or his relative;*
- (iii) Such cruelty or harassment was for or in connection with, any demand for dowry; and*
- (iv) The woman was subjected to cruelty or harassment soon before her death.*

It had been contended before me that there was a delay in lodging the FIR. The incident occurred in the afternoon on 2.12.2000. The deceased had sustained 92% burn injuries. Renu was declared brought dead at 10.30 p.m. The cremation took place the next day. There are photographs on the file in which the members of both the sides had participated. It is after 24 hours of the incident that the matter was reported

to the police. The complainant and his family had arrived at Hassanpur within few hours of the incident. According to the complainant he had given a complaint the same evening but it was stated that it had been torn by the police. The version on the other hand is that the complainant had given a clean chit to them which was removed from the record and on the next day the complaint was taken. The prosecution has not been able to explain the reason for the delay. If the girl had been continuously complaining to her family that she was harassed and tortured with respect to the demand of the dowry, their reaction would have been immediate and the complaint would have been lodged the same evening and they would not have allowed the boys side to participate in the last rites. Though the delay in lodging the FIR is not much but it does bring an element of doubt when the defence has been successful in showing that the girl had made a statement in the presence of the medical officer that she was under the influence of some evil spirits. The mother did not come forward to make the statement. Her brother had not attended the wedding. He did not permanently reside with her father and could not have any information.

The prosecution witnesses were not able to give the telephone numbers, mobile numbers, being used by them. The complainant belong to a poor background and it is doubtful as to whether he could afford a telephone and this is the reason that he was not in a position to give the phone numbers. He could not have forgotten his own number. The son also evaded the question, therefore, it is doubtful as to whether the daughter had been speaking to her parents relating to her plight as projected by the prosecution. The parents have not spoken about the visit made to the in-laws house immediately before the incident and in my view the prosecution had failed to lead evidence to show that the girl was subjected to any cruelty or harassment in connection with the demand of dowry soon before he

death. It was the husband and the in-laws who had brought her to the hospital. The provisions of Section 304-B IPC could apply when the occurrence of death was caused by burns or bodily injury or otherwise than under normal circumstances. The intention behind the Section is to fasten the guilt of the husband or in-laws though they may not have caused the death. The statement made by the brother is hearsay. There is no evidence in connection to demand of the dowry. The prosecution was obligated to show that soon before the occurrence there was cruelty and harassment which they have failed.

In the light of the above, it is held that the prosecution had failed to establish the guilt beyond reasonable doubt and the trial Court had committed error in convicting the appellants.

The appeal is allowed and the impugned order is set aside.

February 10, 2016

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**(ANITA CHAUDHRY)
JUDGE**