

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Appeal No. S-2371-SB of 2003

Date of decision : 06.05.2016

Rajesh Kumar

..... Appellant

versus

State of Punjab

... 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?

3. Whether the judgment should be reported in the digest?

**Present: Ms. Ishma Randhawa, Advocate
for the appellants**

Mr. Deep Singh, AAG Punjab

ANITA CHAUDHRY, J.

The appellant was convicted and sentenced to undergo rigorous imprisonment for a period of 10 years along with fine of Rs. 2000/- under Section 304-B IPC. In default of payment of fine he was to undergo rigorous imprisonment for a period of two months. He was also sentenced to 2 years rigorous imprisonment along with fine of Rs. 1000/- under Section 498-A IPC. In default of payment of fine he was to further undergo rigorous imprisonment for a period of one month. Both the sentences were ordered to run concurrently.

Rajesh Kumar - appellant was married to Sushma on 14.04.2000. It needs to be mentioned here that in the complaint the date of marriage is mentioned as 13.4.2000. The wedding card produced by the prosecution gives the date of marriage as 14.04.2000.

The unfortunate incident took place on 23.08.2000 within four

months of the marriage. A complaint was lodged by Parshotam Lal, father of the deceased. He had levelled allegations that the family was not satisfied with the dowry and the deceased used to tell him that she had no say in the house. The husband used to run a small depot. Allegations were levelled that the mother-in-law, the elder brother of the husband and his sister used to taunt and pester her for bringing money from her brothers as they were earning well. Money was demanded so that her husband could start some other work. The complainant had alleged that he had paid Rs. 20,000/- but still his daughter was harassed. Sushma returned to the parents house after a month and conveyed to her family that there was a demand for more money. Parshotam Lal contacted his son-in-law and asked him to come to his house. Rajesh came to the complainant's house, the complainant made him understand that it was very difficult for him and he had already paid Rs. 20,000/-. He paid Rs. 10,000/- more and asked him to stop maltreating his daughter. The complainant also asked Rajesh to send his daughter to his house for the customary stay at his house in the month of Sawan. Rajesh left Sushma at her parents house. Sushma had narrated an incident when she and her husband were going to the market and her husband started the scooter but the elder brother forcibly took the scooter and said that in case she was fond of riding a scooter she could bring the same from her parents. She was slapped and abused.

On 16.08.2000, Rajesh came to take Sushma back and her parents presented the customary gifts. A week later a call was received on 23.08.2000 that Sushma had consumed poisonous substance and was admitted in the Hospital. The family reached the Hospital and Sushma was found unconscious. She was not in a position to speak. In the meantime, Rajesh also reached the hospital and after consultation they decided to take her to another Hospital but she died on the way.

The police recovered two letters written by the deceased. The wedding card was taken into possession. On completion of investigation, challan was presented against five persons under Sections 304-B and 498-A IPC.

The prosecution examined 11 witnesses which included the Doctor who had conducted the postmortem examination, the photographer and the police officials. The star witness was the complainant, PW-2 Vipin Kumar. In the 313 Cr.P.C., statement Rajesh Kumar took the plea that Sushma was short tempered lady and was suffering from depression and on the date of incident he left home without food as it was not prepared and when he was at Rayya he got news about the condition and straightway went to the Hospital and also informed his wife's parents. Rakesh Kumar elder brother of Rajesh took the plea that he was posted at Batala and had separate residence. In defence the accused had examined five witnesses who had mainly came to depose about the separate residence of Rakesh.

The trial Court only convicted the husband. The rest of them were acquitted giving them the benefit of doubt. No appeal was preferred by the State.

I have heard both the parties.

Initiating the arguments, the counsel had urged that the girl had died of poisoning and the allegations were against brother-in-law and mother-in-law and they have been acquitted and the husband should have been given a similar treatment. It was urged that husband immediately went to the hospital on hearing the news and had also informed the parents. It was contended that the deceased had not made any allegation of demand or cruelty against the husband and the tone and tenor of the suicide note only refers to the conduct of the mother-in-law and the Jeth and the taunts that thrown at her. It was urged that for a conviction under Section 304-B

IPC there has to be evidence that soon before death there was cruelty and harassment in connection with dowry and that evidence is missing. It was urged that the witnesses have spoken about the incident where the brother-in-law was alleged to have slapped the deceased. It was urged that if it is taken that there was a demand, but it was for starting the business which would not fall within the definition of dowry. It was urged that the witnesses have given an exaggerated account and not a word had been stated in the complaint that any amount was paid and it was an embellishment. It was urged that specific words were used by the deceased in her letter and she had a good word for him and it says that the husband was scared of his elder brother and mother.

The submission on the other hand was that the marriage was just four months old and taunts were thrown and she was abused and the husband did not take a stand and the deceased had mentioned about the demand of dowry and the amount that had been paid. It was urged that the false plea had been taken by the accused that the girl was short-tempered and the death had taken within seven years of marriage and the girl had spoken to her parents about the treatment she was facing.

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 marriage took place in April 2000 and the incident took place on 23.08.2000. Death had taken place within seven years of marriage and it was on account of poisoning. The question to be examined here is as to whether accused had committed dowry death and whether the girl was subjected to cruelty and harassment by the husband so as to invoke the provisions of Section 113-B of the Evidence Act.

The prosecution in order to prove its case had examined the complainant, Parshotam Lal. The husband used to run a depot in Rayya a place away from Amritsar. The husband used to go there daily in the morning and returned in the evening. Parshotam Lal PW-2 had stated that her daughter had visited his house in August and the son-in-law came to take her back and he sent her daughter with the appellant with the customary gifts and a week later he got a call from Rakesh Kumar, the elder brother of Rajesh that Sushma had consumed poison and her condition was serious. Parshotam Lal had stated that in the initial one month her daughter was happy and she visited their house after a month and told them that the mother-in-law, husband, elder brother and sister of her husband were maltreating her and were demanding dowry. He deposed that they wanted Rs. 20,000/- to start another shop. The complainant stated that he had paid Rs. 20,000/- in the month of May, 2000 and had asked the accused that they should not maltreat her daughter and after a month his daughter returned and told him that the maltreatment was continuing. He stated that he asked his son-in-law to send his daughter in the month of Sawan and his daughter remained in his house for the whole month and during this period she narrated the incident of the beatings given by her Jeth and that she was slapped and abused.

To lend support, the prosecution had also examined Vipar Kumar PW-3 who made a similar statement as made by Parshotam Lal. He denied that his sister was shifted to Saini Hospital on his suggestion but he admitted that his mother had remained admitted in Saini Hospital and on that account they had been visiting that hospital.

Dr. Gurmanjit Rai, PW1 from Govt. Medical College, Amritsar had conducted the postmortem. He stated that cause of death was kept pending and on receipt of chemical examiner's report they had opined that death was on account of consumption of aluminium phosphide pesticide which was sufficient to cause death in the ordinary cause of nature.

Two letters were produced by the prosecution which were recovered from the Almirah from the parents house. One of the letter Ex. P1 was addressed to the brother where a reference was made generally to the in-laws that they had made her life miserable. She had voiced her feelings that it was difficult to face people who were bad and that she was passing through a bad phase and the (brothers) had married her off with great aspirations and they did not know what life she was going through. She had spoken about the words that were used by the in-laws attacking her character. She had mentioned that her mother-in-law and Jeth had a criminal mind and names of such persons figured in the newspaper and she feared them and they used to take major decisions in the house. She had briefly referred to her husband that he was good but he was really scared of his mother and brother. She had also written that she had spent three months in the matrimonial home and the whole day was spent in doing the household chores and she did not even get time to breathe and she was unable to decide how to deal with the situation. She had also mentioned that a demand of Rs. 40,000/- had been made and in case she conveyed it to her parents, they would do something but she did not have the heart to

convey it to her parents and she feared her mother-in-law, Jeth and their faces used to haunt her.

In another letter Ex. P2 she had mentioned that in case anything happened to her it would be her in-laws who would be responsible and her clothes, ornaments, TV, Refrigerator and furniture should be given to her parents.

These letters were found in the Almirah of the deceased. These letters were written when Sushma came to her parents house and had lived for a month. The husband took Sushma back to the matrimonial home on 16.08.2000.

The father had spoken about the demand and the harassment. The allegations were against the husband and other relatives staying in that house, but if the contents of the letters are examined, it clearly appears that it was the mother-in-law and the Jeth who were accused of harassment and cruelty and demand of money. The deceased had fondly referred to her husband as being 'good' but it also reads that his mother and brother had a over powering nature. The letter also brings up the atmosphere prevailing in the house. It has come in evidence that the elder brother of the deceased was a police official and that is why he was exercising his authority in the house.

The fact remains that the girl had been visiting her parents house and it was the husband who used to leave her and take her back. Not a word had been stated regarding demand by the husband or any harassment or cruelty at his hands in any of the letters. There was no reason why the deceased did not mention about his role. She could have written about him also. Infact she had written that he was good. All was well between the couple. Had the relations been strained it would have been otherwise. The complainant had lost his daughter and it is his anguish which is reflected in

the complaint when he named all the family members. The letters written by the girl did not contain any material to record a finding that there was demand of dowry or cruelty by him soon before her death.

Resultantly, the appeal is accepted. The judgment of the trial Court is set aside. Bail bonds are discharged.

May 06, 2016

reena

**(ANITA CHAUDHRY)
JUDGE**