

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

**Crl. Misc No. 27212 of 2016 in/and
Crl. Revn No. 3130 of 2016
Date of decision : 12.12.2016**

Gurdial Singh

....Petitioner

versus

State of Punjab

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. S.S. Sidhu, Advocate
for the petitioner.

Mr. A.P.S. Gill, AAG, Punjab

RITU BAHRI, J.

C.M. No. 27212 of 2016

For the reasons mentioned in the application, delay of 209 days
in filing of the present revision petition is condoned

Application stands disposed of.

Crl. Revn No. 3130 of 2016

The present revision petition is directed against order dated
06.11.2015 whereby learned Sessions Judge, Mansa has framed charges
against the petitioner under Sections 304-B/498-A IPC.

The marriage of the petitioner was solemnized with the
daughter of the complainant on 04.03.2015 and on 06.05.2015 the daughter
of the complainant was complaining pain in her abdomen and petitioner
took her to the nearby reputed private hospital namely Virk Nursing home
from where she was referred to Government Hospital due to her
deteriorating condition and unfortunately wife of the petitioner expired and

parents of the deceased were informed and subsequently father of the petitioner lodged the F.I.R against the petitioner.

On 07.05.2015, the post mortem of the body of the deceased was got conducted by the Board of Doctors and as per post mortem report, there was no external mark of injury on her body and even the doctors conducting the post mortem have mentioned ***“symptoms observed before death-none by me”*** in the post mortem report. Thereafter, viscera of the deceased was sent for chemical examination to the chemical examiner and it was mentioned by the Board of Doctors that ***“In this case, opinion will be given after the chemical examiner Punjab reports”***.

Thereafter, when the petitioner was in custody, police filed challan against the petitioner under Section 304-B and on the basis of this challan, vide impugned order dated 06.11.2015 the learned Sessions Judge framed charges against the petitioner under Section 304-B/498-A.

Learned counsel contends that as per chemical examiner report, the cause of the death is natural as no poison was detected in the contents of any exhibits sent for chemical examination by the chemical examiner (P-3).

Learned counsel has further submitted that the investigating agency even sought opinion after receipt of the said chemical examiner report dated 05.08.2015 from the medical officer with regard to cause of death and the concerned medical officer opined, the cause of death in this case cannot be ascertained. Further there was no external mark of injury nor any poison etc on the body of the deceased.

Heard learned counsel for the petitioner.

At this stage, reference can be made to Section 304-B of IPC,

which reads as under:-

“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. 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.]

Reference at this stage can be made to a judgment of Hon'ble the Supreme Court of India in a case of ***Joydeb Patra and others vs. State of West Bengal, 2013(2) R.C.R Criminal 338*** whereby wife died in the matrimonial house and the accused husband and other family members were convicted on the ground that the burden was on the accused persons to prove as to how the death of the deceased actually took place. Hon'ble the Supreme Court while allowing the appeal held that the burden to prove the guilt of the accused beyond reasonable doubt is on the prosecution and it is only when this burden is discharged that the accused could prove any fact within his special knowledge under Section 106 of the Indian Evidence Act to establish that he was not guilty. In para 8, it has been observed as under:-

“8. We are afraid, we cannot accept this submission of Mr. Ghosh.

This Court has repeatedly held that the burden to prove the guilt of the accused beyond reasonable doubt is on the prosecution and it is only when this burden is discharged that the accused could prove any fact within his special knowledge under Section 106

*of the Indian Evidence Act to establish that he was not guilty. In **Sucha Singh Vs. State of Punjab (2001) 4 SCC 375**, this Court held:*

“We pointed out that Section 106 of the Evidence Act is not 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 prosecution has succeeded in proving facts for which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of special knowledge regarding such facts failed to offer any explanation which might drive the court to draw a different inference.”

Similarly, in **Vikramjit Singh Vs. State of Punjab (2006) 12 SCC 306**, this Court reiterated:

“Section 106 of the Indian Evidence Act does not relieve the prosecution to prove its case beyond all reasonable doubt. Only when the prosecution case has been proved the burden in regard to such facts which was within the special knowledge of the accused may be shifted to the accused for explaining the same. Of course, there are certain exceptions to the said rule, e.g., where burden of proof may be imposed upon the accused by reason of a statute.”

In the present case, no case is made out against the petitioner under Section 304-B IPC, as no poison was detected in the body of the deceased. Further both post mortem report as well as chemical examiner report shows that neither there is any external injury upon the person of the

deceased or any symptoms found before death nor there is any poison detected in the viscera, therefore, it cannot be held that the death is unnatural and thus, no offence under Section 304-B IPC is made out against the petitioner. Further the allegations are found to be general in nature. At most petitioner can be tried under Section 498-A IPC.

Applying the ratio of the above said judgment, the revision petition is partly allowed and order dated 06.11.2015 is modified to the extent that the charge framed under Section 304-B IPC is set aside and the trial Court is directed to proceed with the trial qua petitioner under Section 498-A IPC only.

12.12.2016

G Arora

(RITU BAHRI)
JUDGE