

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. CRA-S-150-SB-2000
Date of decision: 8.9.2017

Ishwar and another ...Appellants

Versus

State of Haryana ...Respondent

2. CRA-S-281-SB-2000 (O&M)

Vinod ...Appellant

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr.Abhinav Gupta, Advocate/ Amicus Curiae
for the appellants
Ms.Dimple Jain, AAG, Haryana

JITENDRA CHAUHAN, J.

This judgment shall dispose of both the aforementioned appeals, which have arisen out of common judgment and order dated 31.1.2000/2.2.2000 passed by learned Sessions Judge, Karnal vide which the accused-appellants were convicted and sentenced as under:-

Accused	Under Sections	Sentence
Vinod	304-B IPC	Ten years rigorous imprisonment
Vinod, Ishwar and Tikka Ram	498-A IPC	Two years rigorous imprisonment each and a fine of Rs.500/- each. In default of payment of fine, defaulting accused shall further undergo RI for three months

In brief the case of the prosecution as mentioned in Para No.2 of the judgment passed by the trial Court is as under:-

“As per the FIR, which was lodged by Jai Pal complainant, he was working in the Post Office and were five brothers and three sisters and that Sudesh was the younger one and she was married in February, 1993 with Vinod son of Tikka resident of Village Chochra and sufficient dowry was given at the time of marriage. Sudesh was issueless. She was treated nicely for one year in the matrimonial home but after one year of the marriage, all the accused started maltreating her. In the month of May, 1994, father-in-law and husband of Sudesh (since deceased) had come in the village and demanded Hero Honda and an amount of Rs.12,000/- was paid to Tikka Ram. In the month of December, 1994 she again was thrown out of the matrimonial home after giving beating and panchayat was convened in village Chochra but futile. It was alleged that however, she went to her in-laws and in the month of October, 1995 she was again given beating and thrown out of the house in three clothes. The matter was disclosed to her parents and his brother Subhash and a panchayat was convened and Rs.20,000/- were paid to the accused but after

three months she was again turned out of the house and she remained at her parental home for eight months. It is alleged that on 21.9.1996 she was taken back to his house by Vinod Kumar but on 23.9.1996 at about 3 p.m. they were informed about the death of Sudesh and that they were fully sure that either Sudesh had been given poison or she had taken poison compelled by the circumstances. On these allegations a case was registered and accused were arrested.

After completion of investigation, a report under Section 173 Cr.P.C. was filed in the Court against the accused -appellant alongwith Kamlesh w/o Ishwar, Sat Pal s/o Tikka Ram and Moorti Devi w/o Tikka Ram, on the basis of which, they were charge-sheeted under Sections 304-B and 498A IPC, to which, they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined PW-1, Dr.SK Katyal, PW2 Jai Pal, brother of deceased Sudesh; PW3 Kali Ram, father of deceased Sudesh; PW4 Subhash son of Kali Ram; PW5 Balwan Singh; PW6 Dalip Singh ASI (Retd.) and thereafter closed its evidence.

The statements of accused were recorded under Section 313 Cr.P.C, in which all the incriminating circumstances appearing in the prosecution evidence were put to the accused which the accused denied and pleaded innocence. In defence, they examined seven witnesses i.e.

DW1 Jagpal, Record Keeper Sugar Mills, Kaithal; DW2 Chanderbhan, Sub Inspector, AFSO; DW3 Prem Chand; DW4 Rajesh Kumar; DW5 Rohtash; DW6 Suresh Kumar and DW7 Suraj Mal.

After analyzing the evidence on record and hearing the arguments of learned Public Prosecutor for the State as well as learned counsel for the accused, the learned trial Court vide impugned judgment and order dated 31.1.2000/2.2.2000, convicted and sentenced the accused- appellants as narrated above, whereas Kamlesh, Moorti Devi and Sat Pal were acquitted.

Feeling aggrieved against the impugned judgment and order passed by the trial Court, the accused - appellants have filed the instant two appeals.

At the very outset, it is to be noticed that that accused -appellant Tikka Ram has since expired and the appeal bearing No. CRA-S-150-SB-2000, qua him stands abated.

On behalf of accused-appellants, it is submitted that in the FIR, general and vague allegations have been levelled against the accused-appellants. Accused Tikka Ram and Ishwar are father-in-law and brother-in-law of the deceased respectively. There is nothing on record to establish that deceased Sudesh was subjected to cruelty or harassment by the appellants for want of more dowry. There is no specific allegation against any of the members of the family as to who raised demand of dowry and in whose presence Rs.20,000/- and Rs.12,000/-were given to the accused-appellants for purchase of Hero

Honda motorcycle. No specific time and date has been mentioned for handing over the money to the accused and also there are material discrepancies in the statements of PW2, PW3 and PW4 regarding arrangement of money. No witness was examined by the prosecution to prove that the money was paid in his presence. It is further submitted that rather accused Vinod took the deceased to the hospital to save her life. Neither Sudesh (since deceased) nor her family member moved any complaint before any authority regarding harassment on account of demand of dowry prior to her death. There is no evidence that deceased was ever harassed or beaten by the accused persons soon before her death or any time earlier to that. No independent witness was joined by the prosecution. Accused Vinod has been convicted only on the basis of presumption, however, there is no incriminating evidence against him.

On the other hand, learned State counsel submitted that the death of deceased occurred within a period of seven years of marriage of accused Vinod with the deceased. As per the evidence led by the prosecution, the deceased was subjected to cruelty by the accused – appellants for demand of more dowry. The trial court has rightly convicted and sentenced the appellants.

I have heard the learned counsel for the parties and have gone through the record.

The primary question, which arises for consideration, is whether the suicide was a result of the required *actus reus*, i.e. cruelty as defined in Section 498A IPC or the *actus reus* in the form of demand of

dowry soon before the death, which is mandated by Section 304B IPC.

Before dwelling into the factual aspects, it would be relevant to reproduce Sections 498A and 304B IPC:-

“498A. Husband or relative of husband of a woman subjecting her to cruelty.-Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation-For the purpose of this section, "cruelty" means-(a) Any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health whether mental or physical) of the woman; or (b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her meet such demand.

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 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 of dowry, such death shall be called “dowry death” and as such husband or relative shall be deemed to have caused her death.”

Under Section 498A IPC, cruelty can be of two types. Firstly, wilful conduct of a nature, which is likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health. Wilful conduct can be both mental and physical but it must relate to a woman. Secondly, cruelty can also mean harassment with a view to coercing her or any person related to her to meet unlawful demand of any property or valuable security or on account of her failure or of any person related to her to meet such demand. The second aspect is relatable to property, and should be with a view to coerce her or any other person related to her to meet any unlawful demand of property or valuable security. Further, the harassment should be on account of her failure or failure of any other person related to her to meet the said demand.

Section 304B has the following requirements:-

- “(i) The woman should have died because of burns, bodily injury, poison or otherwise than under normal circumstances within seven years of marriage;
- (ii) It should be shown that soon before her death, she was subjected to cruelty or harassment by her

husband or relative of her husband for or in connection with any demand of dowry; and

(iii) The term dowry shall have the same meaning as defined in Section 2 of the Dowry Prohibition Act, 1961.”

PW2 Jai Pal, complainant, brother of the deceased, in his statement deposed that Sudesh was treated nicely for sometime after the marriage but after one year of marriage, she was subjected to harassment for want of dowry by her husband and family members. In the month of May, 1994, Vinod Kumar alongwith his father Tikka Ram came to their village and demanded Hero Honda Motorcycle. His father Kali Ram gave an amount of Rs.12,000/- to Tikka Ram accused. Thereafter she was treated nicely for some time but in the month of December, 1994 she was again turned out of the house. Thereafter a panchayat was convened, wherein all the accused were present. His father told them that he would give more money to purchase the Hero Honda Motorcycle. On this assurance, Sudesh was left in the house of the accused. In the month of October, 1995, she was given beatings and again turned out of the house. She narrated the entire incident to him, her father and brother Subhash. Thereafter, again a panchayat was convened and his father gave a sum of Rs.20,000/- to the accused. However, they were demanding Rs.35,000/- and she remained in the house of the accused but again she was harassed and turned out of the matrimonial house. She remained in the parental home for 7-8 months. Again due to intervention of the respectables,

Vinod accused took Sudesh on 21.9.1996. On the intervening night of 22/23.9.1996 she consumed poisonous substance and died.

PW3, Kali Ram (since deceased), father of the deceased Sudesh and PW4 Subhash s/o Kali Ram corroborated the version of PW2 Jai Pal. They stated that Sudesh was harassed and turned out from her matrimonial home many a times due to non-fulfilment of demand of dowry i.e. Hero Honda motorcycle. All the three witnesses deposed that when accused Vinod alongwith his father Tikka Ram visited their village in May, 1994 an amount of Rs.12,000/- was handed over to them but when they did not satisfy, again a panchayat was convened in village Chochra and again an amount of Rs.20,000/- was given to the accused. As per deposition of PW2 Jai Pal, complainant out of Rs.12,000/- an amount of Rs.8000/- was already lying with him and remaining amount of Rs.4000/- was obtained from one Satish Kumar. PW4 Subhash, brother of the deceased deposed that Jaipal sold a buffalo for Rs.14,000/- and remaining Rs.4000/- was borrowed from Giani Ram.

The expression “soon before her death” is used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act. No definite period has been indicated and the expression “soon before her death” is not defined. The determination of period which can come within the term “soon before the death” is left to be determined by the Court depending upon the facts and circumstances of each case.

The presumption under Section 113-B of the Evidence Act with respect to 'dowry death' can be raised only on the proof of the

following four essential conditions:-

1. The woman was subjected to cruelty or harassment,
2. by the husband or his relatives;
3. For or in connection with any demand of dowry;
4. soon before her death.

Section 113-B of the Evidence Act 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 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.

In dowry death cases, direct evidence may not be available.

Such cases may be proved by circumstantial evidence. Section 304B IPC read with Section 113 B of the Evidence Act indicates the rule of presumption of dowry death. If an unnatural death of a married woman occurs within seven years of marriage in suspicious circumstances, like due to burns or any other bodily injury or there is cruelty or harassment by her husband or relatives for or in connection with any demand for dowry soon before her death then it shall be dowry death.

The aforesaid presumption under Section 113B of the Evidence Act takes care of the difficulty in proving requirement (e) i.e.

the death was in connection with the dowry, once the other

ingredients/requirements of Section 113B are established.

In **Pawan Kumar v. State of Haryana, (1998) 3 SCC 309**, Section 2 of the Dowry Prohibition Act, 1961 was interpreted and it was highlighted that the Dowry Prohibition Act, 1961 was enacted to provide effective check on the evil practice of dowry and its ill-effects. Section 2 of the Dowry Prohibition Act reads:-

"2. Definition of "dowry". In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly- (a) by one party to a marriage to the other party to the marriage; or (b) by the parents of either party to a marriage or by a other person, to either party to the marriage or to any other person; at or before or after the marriage as consideration for the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies. Explanation I.-For the removal of doubts, it is hereby declared that any presents made at the time of a marriage to either party to the marriage in the form of cash, ornaments, clothes or other articles, shall not be deemed to be dowry within the meaning of this section, unless they are made as consideration for the marriage of the said parties."

The definition of dowry was expanded and extended to include the period even after solemnisation of marriage by Act 43 of 1986. The Supreme Court elucidated that in criminal jurisprudence, principle of benefit of doubt extends to the accused and has an important role but the same prevails within the confines of the stringency of laws.

In case of abnormal death such as dowry death, the deeming provisions in form of Sections 113A and 113B of the Evidence Act along with applicable provisions of Indian Penal Code have a great role to play and should not be taken lightly or ignored or otherwise, the very purpose of the amendment would be lost. Of course, the prosecution has to prove the essential ingredients beyond all reasonable doubts after raising and relying upon the initial presumption of deemed dowry death. Principle of mischief rule i.e. the construction which suppresses the mischief and advance the remedy is applicable.

The term “soon before death” which finds incorporation in Section 304B IPC and Section 113B of Evidence Act has been interpreted in several cases to connote and signify reference to course of conduct which may be spread over a period of time. It is a relative term and the time or period applicable would depend upon circumstances of each case and no strait jacket formula can be laid down as to what would construe a relevant/culpable period before the occurrence. The said period should not be unreasonably stretched or made abnormally narrow/small but a practical and pragmatic approach should be adopted. In **State of Punjab v. Iqbal Singh : AIR (1991) SC 1532** it was observed:

"8. The legislative intent is clear to curb the menace of dowry deaths, etc., with a firm hand. We must keep in mind this legislative intent. It must be remembered that since crimes are generally committed in the privacy of residential homes and in secrecy,

independent and direct evidence is not easy to get. That is why the legislature has by introducing Sections 113A and 113B in the Evidence Act tried to strengthen the prosecution hands by permitting a presumption to be raised if certain foundational facts are established and the unfortunate event has taken place within seven years of marriage. This period of seven years is considered to be the turbulent one after which the legislature assumes that the couple would have settled down in life. If a married woman is subjected to cruelty or harassment by her husband or his family members Section 498A, Indian Penal Code would be attracted. If such cruelty or harassment was inflicted by the husband or his relative for, or in connection with, any demand for dowry immediately preceding death by burns and bodily injury or in abnormal circumstances within seven years of marriage, such husband or relative is deemed to have caused her death and is liable to be punished Under Section 304B, Indian Penal Code. When the question at issue is whether a person is guilty of dowry death of a woman and the evidence discloses that immediately before her death she was subjected by such person to cruelty and/or harassment for, or in connection with, any demand for dowry, Section 113B, Evidence Act provides that the court shall presume that such person had caused the dowry death. of course if there is proof of the person having intentionally caused her death that would attract Section 302, Indian Penal Code. Then we have a situation where the husband or his relative by his

wilful conduct creates a situation which he knows will drive the woman to commit suicide and she actually does so, the case would squarely fall within the ambit of Section 306, Indian Penal Code. In such a case the conduct of the person would tantamount to inciting or provoking or virtually pushing the woman into a desperate situation of no return which would compel her to put an end to her miseries by committing suicide."

In the case of **Kans Raj v. State of Punjab and Ors. : (2000) 5 SCC 207**, it has been held that in cases of dowry death, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instances but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand of dowry is shown to have persisted, it shall be deemed to be "soon before death".

Elucidating the said principles in **Dhian Singh and Anr. v. State of Punjab: (2004) 7 SCC 759**, Hon'ble the Supreme Court observed that such cruelty on account of demand of dowry should be soon before death in the sense that there should be proximate connection between the alleged cruelty and death. In the said case, Hon'ble the Supreme Court upheld conviction under Section 304B IPC observing that only after mediation, the deceased had gone back to the house of the accused and soon thereafter i.e. within two months, the death occurred. There was evidence to show that the accused had demanded dowry and had sent his wife away from his house.

Similarly in **Kailash v. State of Madhya Pradesh (2006)**

12 SCC 667 it has been held:

"No presumption under Section 113B of the Evidence Act would be drawn against the accused if it is shown that after the alleged demand, cruelty or harassment the dispute stood resolved and there was no evidence of cruelty or harassment thereafter. Mere lapse of some time by itself would not provide to an accused a defence, if the course of conduct relating to cruelty or harassment in connection with the dowry demand is shown to have existed earlier in time not too late and not too stale before the date of death of the victim. This is so because the expression used in the relevant provision is "soon before". The expression is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. The expression is pregnant with the idea of proximity test. It cannot be said that the term "soon before" is synonymous with the term "immediately before". This is because of what is stated in Section 114 Illustration (a) of the Evidence Act. The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon the facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link."

Thus, the expression “soon before” is required to be considered and applied under specific circumstances of each case. The said term is not synonymous with the term “immediately before” and whether the period can be termed as “soon before death” is left to be determined by the court depending upon circumstances of each case.

Similar position was illuminatingly stated by Hon'ble the Supreme Court in **Kans Raj (supra) and Hira Lal v. State (Govt. of NCT), Delhi (2003) 8 SCC 80**. In the last decision, reference has been made to illustration A to Section 114 of the Evidence Act where expression “soon before” is also used and it has been held that the term “soon before” is case specific and has to be determined by the courts depending upon facts and circumstances of each case. There should be existence of proximate and live link between the demand of dowry and the unnatural death.

In **Kashmir Kaur v. State of Punjab, (2012) 13 SCC 627**, it was held:

"13. In **Kaliyaperumal vs. State of Tamil Nadu, 2004 (9) SCC 157** para 5 is relevant for our purpose which reads as under: (SCC pp. 162-63) "5. A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the “death occurring otherwise than in

normal circumstances”. The expression “soon before” is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates.

Evidence in that regard has to be led in by the prosecution. “Soon before” is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. The expression “soon before her death” used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression “soon before” is not defined. A reference to the expression “soon before” used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who is in the possession of goods soon after the theft, is either the thief who has received the goods knowing them to be stolen, unless he can account for his possession. The determination of the period which can come within the term “soon before” is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to

indicate that the expression “soon before” would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence."

Reverting to the instant case, Sudesh was taken back by accused Vinod on 21.9.1996 from her parental home and after two days, i.e. 23.9.1996 at 3.00 p.m., she committed suicide in her matrimonial home by consuming some poisonous substance. As per the Chemical Examiner Report Ex.PB/I, the cause of death of deceased Sudesh was due to consuming “aluminium phosphide”. In his defence, Vinod has deposed that he had taken Sudesh to the local doctor after she consumed poisonous substance and from there she was referred to Kaithal but on the way she died. The appellant has not examined the said local doctor or any other witness in his defence to prove the said fact that he had made sincere efforts to save the life of the deceased.

Section 113A of the Act, dealing with abetment of suicide, uses the expression “may presume”. This being the position, a two stage process is required to be followed in respect of an offence punishable under Section 304B IPC; it is necessary to first ascertain whether the ingredients of the Section have been made out against the accused; if the

ingredients are made out, then the accused is deemed to have caused the death of the woman but is entitled to rebut the statutory presumption of having caused a dowry death. In the present case, from the evidence on record, it is evident that Sudesh died an unnatural death by consuming poisonous substance as she was subjected to cruelty/ harassment by her husband with the demand for dowry due to which she committed suicide. As the death occurred at her matrimonial home, otherwise than under normal circumstances, within seven years of her marriage and the case squarely falls within the ambit of dowry death, the provisions of Sections 304B and 498A of IPC will be fully attracted.

Keeping in view that the harassment and cruelty is meted out to a woman within the four walls of the matrimonial home, therefore, it is difficult to get independent witnesses to depose in this regard, thus the argument that no independent witness was examined deserves rejection.

However, the case of the appellant No.1 Ishwar is on different footing. He is brother-in-law of the deceased. The accusations against him are general nature. Moreover, he was not benefitted from the dowry articles in case the demand had been to met.

In Preeti Gupta and another vs. State of Jharkhand and another 2010(7) SCC 677, Hon'ble the Supreme Court observed as under:-

“33. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent.

To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.

34. Before parting with this case, we would like to

observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases.”

In view of the above discussion, this Court is of the considered view that the case of the prosecution is not proved against appellant - Ishwar, brother-in-law of the deceased, beyond reasonable doubt and therefore, he is acquitted of the charge under Section 498A IPC. However, the case against accused Vinod is fully proved by the prosecution. As such, CRA-S-150-SB-2000 qua appellant No.1- Ishwar is allowed, whereas qua appellant No.2- Tikka Ram stands abated and CRA-281-SB-2000 filed by accused Vinod is dismissed. Bail bonds of appellant-Ishwar stand discharged.

Accused- appellant Vinod is stated to be on bail. His bail is cancelled. He be taken into custody to serve the remaining part of the sentence.

8.9.2017

(JITENDRA CHAUHAN)

gsv

JUDGE

Whether speaking / reasoned?

Yes /No

Whether reportable?

Yes /No