

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

CRA-S-1206-SB-2013

Date of decision: 18.11.2017

Charan Singh

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr.Ravinder Malik, Advocate for the appellant

Ms.Mahima Yashpal, AAG, Haryana

JITENDRA CHAUHAN, J.

The present appeal is directed against the judgment and order dated 13/15.12.2012 passed by learned Additional Sessions Judge, Panipat, vide which the accused-appellant, namely, Charan Singh was convicted under Section 304-B of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years, whereas co-accused Roshani was given benefit of doubt and acquitted.

The brief facts of the as enunciated in para No.2 of the judgment passed by the trial Court, are as under:-

“...on 10.10.2010, a telephonic information was received regarding death of Sunita wife of Charan Singh resident of Rakashera, on which SI Ranbir Singh and other police officials reached the spot, where Naresh Kumar son of Surat Singh got recorded

his statement to the effect that his brother Jai Kuwar had expired in an accident about 20 years ago and he (Naresh Kumar) had married with wife of Jai Kuwar namely Dayawati. Two daughters namely Reena and Sunita had born out of the wedlock of Jai Kuwar and Dayawati, while out of his wedlock with Dayawati, three daughters and two sons had born. He had married his daughter Sunita about 4½ years ago with Charan Singh son of Bhajan Dass and had given dowry beyond his capacity. However, after about one year of marriage, Charan Singh and his mother Roshni started harassing, torturing and taunting Sunita for bringing insufficient dowry. Sunita disclosed these facts to him and also moved application to Mahila Mandal Akbar Baroha, where Charan Singh and his mother Roshni felt sorry for their mistake and Sunita was sent alongwith them to Rakashera. When compensation amount regarding accident of Jai Kuwar was received, Charan Singh sent to Sunita to him to bring Rs.35,000/-, which were given to Sunita. However, thereafter again, they started harassing Sunita and demanded Rs.40,000/- to get redeemed their land. When Sunita expressed her inability, Charan Singh and Roshni started harassing

and torturing Sunita on demand of dowry. Complainant further alleged that on 9.10.2010, Satya Narayan son of Arjun informed on his mobile phone that Sunita had died, on which, complainant, his family and neighbours reached Rakashera at about 3.00 a.m. and saw that Sunita was lying dead on floor of a room of her house. There were marks on right side of her throat. Complainant alleged that Charan Singh and his mother Roshni Devi had murdered Sunita for bringing insufficient dowry. On the basis of the statement of Naresh Kumar, formal First Information Report under Section 304-B read with Section 34 IPC was registered against the accused persons.

After completion of investigation, a report under Section 173 Cr.P.C. was filed in the Court against the accused -appellant alongwith Roshani Devi w/o Bhajan Dass, on the basis of which, they were charge-sheeted under Sections 304-B IPC and in alternative under Section 302 IPC, to which, they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined PW-1, SI Dalel Singh; PW2 EHC Jagbir Singh; PW3 Gurnam Singh @ Gurmukh Singh; PW4 Dr.Hitesh Chawla; PW5 Complainant Naresh, PW6 Sat Narain s/o of Arjun Singh; PW7 Kaptan Singh; PW8 SI Ranbir Singh; PW9 Inspector Subhash Chander; PW10 EHC Vinod Kumar;

PW11 HC Virender Singh PW12 Lady Constable Krishna and PW13 HC Kaptan Singh 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 and false implication. In defence, they examined as many as four witnesses, namely, DW1 Daya Nand and DW2 Ramesh.

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/order dated 13/15.12.2012, convicted and sentenced accused- appellant Charan Singh as narrated above, whereas Roshani was acquitted of the charges levelled against them by giving benefit of doubt to her.

Feeling aggrieved against the impugned judgment and order passed by the trial Court, the accused - appellant had filed the appeal.

Learned counsel for the appellant contends that the deceased had illicit relation with one Sanjay r/o village Rakashera. She used to meet him regularly as is made out from the statement of PW8 SI Ranbir Singh, Investigating Officer, who has admitted that letter Mark 'A' had been produced before him, which reflects that the deceased was in relationship with said Sanjay. On account of the said fact, the deceased had committed suicide and the appellant has nothing to do with the death of Sunita. Moreover, at the time of death, they were not in the house as

they had gone to watch Ramlila. This fact finds corroboration from the statement of DW1 Dayanand, who has categorically deposed that at the time of death, the appellant was present at Ramlila venue. It is further contended that since, there was absence of demand of dowry and cruelty on the part of the appellant, the presumption under Section 113-B of the Indian Evidence Act cannot be pressed into in the present case.

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

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

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.”

Admittedly, the marriage of the deceased with accused Charan Singh was solemnized 4½ years before the occurrence. PW5, Naresh in his statement, on the basis of which the present FIR was registered, has specifically deposed that he had given sufficient dowry in the marriage of Sunita (deceased). But the appellant and his mother had been harassing Sunita on account of demand of dowry and she was sent to her parental home to bring Rs.35000/-, which was given to her. Thereafter, the accused again demanded an amount of Rs.40,000/- from the deceased for redemption of the land. But she showed her inability as her uncle was a labourer and therefore, he was not able to pay such a huge amount. On this, the accused again started harassing her and then she came to his house. Thereafter, they made an application to the office of Mahila Mandal on account of harassment for demand of dowry by the accused. But as the accused tendered apology therefore, the matter was compromised and Sunita went to her in-laws house with an assurance given by the accused person that they would keep her nicely. Thereafter, on 9.10.2010, the complainant received a telephonic call made by his relative Sat Narain that his niece Sunita was lying dead in her matrimonial home.

PW6 Sat Narain (fufa) of the deceased in his statement specifically deposed that accused Charan Singh used to quarrel with Sunita.

As per Ex.P1, some pieces of bangles were recovered from

the place of occurrence and PW8, SI Ranbir Singh, Investigating Officer, identified the same.

PW4 Dr.Hitesh Chawla, who conducted the postmortem on the dead body of Sunita, noticed a reddish ligature mark around the neck, in its upper part, situated 4 cm below the centre of chin in midline, extending obliquely upwards and outwards (laterally on both sides of neck so as to encircle it completely except for 6 cm in infra-mastoid region on the right side where it was inverted V shape.

The 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 2 of the Dowry Prohibition Act reads as under:-

"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."

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 women 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 causing 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 Others (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 instance but normally refers 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".

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 present 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."

In the present case, the unnatural death of Sunita occurred in the house of the accused within four and half years of the marriage. The plea of alibi that he was not in the house at the time of alleged death as he was watching Ramlila deserved to be rejected as during cross-examination of PW5, Naresh, PW6 Sat Narain and PW7 Kaptan Singh, no suggestion was put to these witnesses by the accused. Even in his statement recorded under Section 313 Cr.P.C., accused had not taken plea of *alibi*. If the plea of the accused that she hanged herself is to be considered, it is the duty of the accused to prove it but there was no stool/chair or any other article which the deceased might have used for climbing and hanging herself. The recovery of broken bangles also shows that the deceased resiled and struggled to save herself before she was either strangled or hanged by the accused. The deceased died within four and half years of her marriage; the death has occurred in unnatural manner and in the house of the accused; the demand of dowry has been proved by PW5, who has specifically deposed that he had given sufficient dowry in the marriage of Sunita (deceased). But the appellant and his mother had been harassing Sunita on account of demand of dowry and she was sent to her parental home to bring Rs.35000/-, which was given to her.

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.

In view of the above discussion, the present appeal fails and is hereby dismissed. The impugned judgment/ order passed by learned trial Court are upheld. As per custody certificate dated 31.8.2017, issued by Deputy Superintendent, District Prison, Karnal, the appellant has been released on 15.7.2017, after expiry of period of sentence i.e. 10 years.

18.11.2017
gsv

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No