

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

(1) CRA S-2500-SB of 2013 (O&M)
Date of Decision: 02.12.2017.

Rakesh Kumar and another ... Appellants

Versus

State of Punjab ... Respondent

(2) CRA S-2456-SB of 2014 (O&M)

Shankutla ... Appellant

Versus

State of Punjab ... Respondent

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Kuldeep Singh, Advocate, (Legal Aid counsel)
for the appellant in CRA S-2500-SB of 2013.

Ms. Gurpal Kaur Dulat, Advocate,
Amicus Curiae for the appellants in both cases.

Ms. Anju Arora, Addl. AG Punjab.

JITENDRA CHAUHAN.J.

This judgment shall dispose of afore-mentioned two appeals bearing CRA S-2500-SB of 2013 and CRA S-2456-SB of 2014 arising out of common judgment and order dated 21.02.2013 passed by Additional Sessions Judge, Ludhiana vide which the appellants were convicted under Section 304-B IPC and sentenced to undergo RI for ten years.

Brief facts of the case as noticed in the judgment passed by the trial Court are as under:-

“Prosecution story as emanating from report u/S 173 Cr.P.C is that on 27.03.2010 SI Jagdish Singh, Incharge P.P. Jagatpuri along with other police officials was present at Chowk Jawala Singh in connection with patrolling duty where complainant Sonu Kumar son of Late Roop Lal, resident of H.No.612, Mohalla Ghumar Mandi, near Radha Balabh Mandir, Ludhiana came present along with his brother-in-law (Jija) Dwaraka Dass and got recorded his statement to the effect that he is resident of above said address and he is a tailor. He has got eight sisters. One of his sister Suman was married to Rakesh Kumar son of Chhote Lal in November, 2009 at Surinder Park, Ludhiana. Sufficient dowry was given to his sister as per their status but after about 10-15 days of the marriage, accused Rakesh Kumar, his father Chhote Lal and mother Shakuntla started taunting his sister Suman and started demanding dowry. His sister told about this to him and to his mother. They went to the in-laws house of the sister and made them understand that they are poor people

and cannot give more than that. At that time they did not say anything to his sister but after Holi festival, all the above said three persons again started taunting his sister and demanded money from her which she refused to bring on the ground that her father is not alive and that her brother cannot give money. Due to this, in-laws of his sister viz. mother-in-law, father-in-law and husband again started harassing her. Today, at about 10.30/11 AM an information was received by complainant on telephone that his sister Suman has died due to burn injuries in her matrimonial house. Complainant along with his mother Ram Piari and brother-in-law (Jija) Dwaraka Dass and other relatives reached the matrimonial house of his sister where dead body of his sister in burnt condition was lying on bed. His sister ended her life on being harassed by her in-laws. He left his relatives near the dead body and went along with his brother-in-law Dwarka Dass to report the matter to the police who met him on the way. After recording his above said statement he signed the same after admitting it as correct. The same was attested by SI Jagdish Singh. Ruqa was sent for registration of the

case u/S 304-B r/w 34 IPC. SI Jagdish Singh along with complainant Sonu Kumar and Dwaraka Dass reached the spot and prepared site plan. One burnt plastic canny was taken into possession vide separate recovery memo. Photographer, Harwinder Singh was called to click the photographs. Dead body was sent to Civil Hospital for keeping it in dead house. On 27.03.2010 SI Jagdish Singh apprehended accused Rakesh Kumar, Chhote Lal and . Statements of the witnesses were recorded u/S 161 Cr.P.C. On returning back to the police station, case property was handed over to MHC. On 28.03.2010, postmortem of the dead body was got conducted from Civil Hospital. On 30.03.2010, accused Chhote Lal got recovered the dowry articles from the house in the presence of Baljit Singh and Santokh Singh and handed over the same to the Investigating Officer which was taken into possession vide separate recovery memo and deposited with the MHC. After completion of necessary formalities challan was prepared and presented against accused u/S 304-B IPC.”

After completion of investigation, challan was presented before the Illaqa Magistrate. The case was committed to the

Court of Session as the offence under Section 304-B IPC is triable by Sessions Court.

Charge under Section 304-B IPC was framed against the accused to which the accused did not plead guilty and claimed trial.

In order to prove its case, the prosecution has examined PW-1 Dr. Harpreet Singh, Medical Officer, Civil Hospital, Ludhiana, PW-2 Sonu Kumar, PW-3 SI Jagidhs Singh, PW-4 Ram Piari, PW-5 Vimal Kapoor, PW-6 Ajay Kumar and closed its evidence.

Statements of the accused were recorded under Section 313 Cr.P.C and all the incriminating circumstances appearing in the prosecution evidence were put to them to which they denied and pleaded false implication. All the three accused have taken plea of alibi.

In defence, no evidence was led by the accused.

After appraisal of the evidence, the learned trial Court, vide impugned judgement and order dated 21.02.2013, convicted the accused/appellants under Section 304-B IPC and sentenced them to undergo RI for ten years.

Feeling dis-satisfied with the impugned judgment and order dated 21.02.2013, the present two separate appeals have been filed by the accused/appellants.

It is contended on behalf of the appellants that the prosecution has failed to prove the guilt of the accused beyond shadow of reasonable doubt as there was no eye witness account of the

occurrence. The death, in fact, took place on account of receiving burn injuries due to short circuit of the television. None of the accused was present at the time of accidental death of Suman. The trial Court has gravely erred in wrongly placing burden of proof on the accused. In criminal trials, the burden of proof always remains on the prosecution to prove its case beyond reasonable shadow of doubt whereas, the trial Court has made the silence of the accused as the basis of their conviction. There was no demand of dowry or harassment to the deceased.

On behalf of Chhotel Lal and Shakuntla (parents-in-law), it is contended that they being parents-in-law had nothing to do with the matrimonial life of Rakesh and Suman.

On the other hand, the learned State counsel supports the judgment and order passed by the trial Court. It is contended that the appellants The demand of dowry has been sufficiently proved by PW-2, PW-4 and PW-6. Even if there is no direct eye witness account, the case of the prosecution is proved from the fact that the deceased died within seven years of marriage and soon before her death, she was subjected to harassment in connection with demand of dowry and as such, presumption under Section 113-B of Evidence Act can be pressed into service so as to convict the accused under Section 304-B IPC.

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

Admittedly, there is no eye witness account of the occurrence. In such circumstances, the Court is left with no option but to rely upon the circumstantial evidence. The case set up by the prosecution is that on 27.03.2010 at about 10.30 a.m., the complainant received a telephonic message that his sister died at her matrimonial house by receiving burn injuries. He along with his brother-in-law Dwarka Das and friend reached the house of the deceased and saw the burnt dead body of deceased lying on the bed. The accused were present there. It is not in dispute that Suman died within four months of her marriage. As PW-1, Dr. Harpreet Singh, Medical Officer, Civil Hospital, Ludhiana, Suman died due to shock as a result of extensive burns which were anti-mortem and sufficient to cause death in ordinary course of nature. Though, the accused have taken the plea of alibi but they have not produced any evidence on record to suggest that they were not present at home when the death took place. On the other hand, the complainant has specifically deposed that when he along with his relatives reached the matrimonial home of deceased, all three accused were present there. It has further come in the evidence of PW-2 complainant Sonu Kumar, PW-4 Ram Piari, mother of deceased and PW-6 Ajay Kumar brother-in-law (Jija) of deceased that immediately after the marriage of deceased with accused Rakesh Kumar her in-laws started maltreating her. They used to make demand of money from the deceased. PW-2 has specifically deposed that accused had demanded

dowry from his sister 10/15 days prior to her death.

As far as parents-in-law are concerned, this Court feels that they have hardly any concern with the demand of dowry. There is no specific allegation against parents-in-law. It is the husband who is responsible for the death of his wife. The aged parents cannot be said to be the beneficiary of the dowry. There is no specific eye witness account that the deceased was murdered by the accused. The Court is relying upon the circumstantial evidence. Since the husband has failed to explain the death of his wife, he must bear the brunt also. The parents-in-law cannot be fastened with the liability with the aid of circumstantial evidence.

Consequently, the appeal filed by the parents-in-law i.e. Chhote Lal and Shakunta are allowed. However, the appeal filed by Rakesh Kumar is dismissed. The impugned judgment and order are modified to that extent. The appellant Rakesh Kumar is stated to be on bail. His bail is cancelled. He be taken into custody to serve the remaining part of the sentence.

A copy of this judgment be placed in the connected appeal.

02.12.2017.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No