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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-4381-SB-2013(O & M)
Date of Decision:12.05.2018

Sunil Kumar and another

...Appellants

Versus

U.T. of Chandigarh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Aman Dhir, Advocate
for appellants.

Mr. Rajiv Sharma, Standing Counsel for U.T.

ANIL KSHETARPAL, J.

Appellants are in the appeal against the judgment of conviction and order of sentence under Sections 304-B, 498-B read with Section 34 of the Indian Penal Code (IPC Act – for short). Operative part of the order of sentence reads as under:-

Offence under Sections	Sentence.
304-B read with Section 34 IPC.	R.I for 10 years each with fine of Rs.5,000/- each and in default of payment of fine to undergo RI for 3 months each.
498-A IPC read with Section 34 IPC.	R.I for 3 years each with fine of Rs.1,000/- each and in default of payment of fine to undergo RI for one month each.

Case of the prosecution as noticed by the learned trial Court reads as under:-

“2. Brief facts of the case are as such, on 9.5.2012, a wireless message was received in Police Station Mauli Jagran; that someone had committed

suicide in House No.1990, Mauli Complex. On receiving this information, S.I. Sawrup Singh alongwith other police officials reached at the spot, where he came to know that one lady had committed suicide after bolting the door in the house. At the spot, one Amarnath, who is father of deceased met him, who got recorded his statement which is ExPJ on the file.

3. In his statement, he stated that he is resident of House No.1456, Vikas Nagar, Mauli Jagran. He is working as a sweeper in Tribune News Paper. He is having five children, three daughters and two sons. His elder daughter Parmawati aged about 22-23 years had been got married 3 years ago with Sunil, son of late Gaya Din, resident of House No.1990, Maulit Complex. After few days of marriage, his son-in-law Sunil and his mother Punu Devi (mother-in-law of her daughter) started harassing her; that she had not brought the dowry according to their expectation. His daughter used to tell them; that she was being harassed by accused. He made understand to Sunil and Punu Devi; that he is a poor man and he and his mother should not harass her daughter on account of dowry, but they did not mend their ways. They used to beat her also.

4. On 9.5.2012, at about 8:30 p.m., he received information that her daughter Parmawati had committed suicide. Then, he alongwith his wife and one

neighbourer Jatinder Kumar reached at House No.1990 and found her daughter hanging with ceiling fan by tying Dupatta in her neck. The room was bolted from inside. He further stated that yesterday, her daughter telephoned him; that both the accused were harassing her on account of dowry. So, due to harassment at the hands of accused, her daughter had committed suicide. Both the accused are responsible for the death of her daughter and action be taken against them."

Prosecution in order to prove its case examined following witnesses

- (1) PW-1 Amar Nath-complainant
- (2) PW-2- Ajay Kumar
- (3) PW-3 Dr. Shailender Kaur
- (4) PW-4 H.C. Yashpal
- (5) PW-5 Constable Pholla Singh
- (6) PW-6 Constable Balwan Singh
- (7) PW-7 Constable Jagtar Singh
- (8) PW-8 Sh. Jatinder Kumar (neighbourer of the complainant)
- (9) PW-9 Kamlesh (mother of deceased)
- (10) PW-10 Head Constable Gurmukh Singh
- (11) PW-11 B.L. Thakur, Senior Manager, Allahabad Bank
- (12) PW-12 Sh. I.S. Narang, Naib Tehsildar-cum-Executive

Magistrate

- (13) PW-13 S.I. Sawarup Singh
- (14) PW-14 Head Constable Santosh Kumar

(15) PW-15 Dr. Vimukti Chauhan, Senior Scientific Officer (Toxicology), CFSL, Sector 36, Chandigarh

(16) PW-16 Sh. M.C. Joshi, Assistant Director at CFSL, Sector 36, Chandigarh.

Statement of the accused were recorded under Section 313 Cr.P.C., in which all incriminating circumstances appearing against them were put to them, but they denied and claimed trial. In defence, DW-1 Rajinder Kumar, brother-in-law of appellant No.1, was examined.

Learned counsel for the appellants has submitted that the offence under Section 304-B is not established. He submitted that prosecution is bound to prove that soon before her death she was subjected to cruelty or harrassment 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 and relative shall be deemed to have caused her death. While elaborating, he submitted that in the present case ingredients of Section 304-B have not been fulfilled.

He first of all drew the attention of the Court to the alleged suicide note, which is part of a diary and submitted that in the suicide note, deceased does not state that soon before her death she was subjected to cruelty or harrassment by her husband or any of the relative of her husband. He submitted that in the alleged suicide note Ex.P-2, she has stated that previously her husband and her mother-in-law used to say lot of things to her on account of insufficient dowry, however, now they taunt her on small issues. He has also submitted that in the suicide note there is no whisper that deceased was ever physically tortured.

Amar Nath (complainant), who appeared as PW-1, father of the deceased. He stated that he received a telephone call from her daughter a day prior to the occurrence and he visited the house of her daughter and met both the accused, who were demanding more dowry from her. However, call record has not been produced by the prosecution. He has further submitted that in the suicide note there is no reference of the deceased having been spoken to her father on the day prior to the occurrence.

He has further drawn attention of the Court to the statement of the mother of the deceased, who has appeared as PW-9, wherein she admitted that initially deceased was engaged to a person residing in Sector 52, Chandigarh but later on married with appellant No.1. She further stated that she did not like that boy i.e. person with whom her daughter got engaged first in point of time. He has further drawn attention of the Court to the admission of the mother wherein she admits that there is a custom in their family under which married daughter for first six months lives with her parents. He while drawing further attention of the Court to the evidence of the mother of the deceased, he submitted that regarding allegations of beating, no complaint was ever lodged with the police and the matrimonial house of the daughter was situated in a thickly populated area and her deceased daughter never complained in the neighbourhood regarding maltreatment.

Learned counsel for the appellants has further submitted that the alleged suicide note Ex.P-2 is not proved as it is a part of diary, which is not proved to be the belonging of the deceased Parmawati. He has referred to the diary which is available on the file as Ex.P-1 which contains various

that she was being harassed or she was beaten up. He submitted that after 20 blank pages, the alleged suicide note is alleged to have been written. He submitted that no doubt effort has been made to compare the signatures of Parmawati with her bank account maintained in Allahabad Bank. However, the aforesaid signature does not prove that the suicide note was written by the deceased only. He has submitted that the prosecution could have compared the hand writing on the suicide note with the hand writing of the deceased written in the diary. However, it has not proved that the diary belongs to the deceased.

On the other hand, learned State counsel has supported the judgment of the learned trial Court and has submitted that in the present case, prosecution has successfully proved that appellants used to harass the deceased and beat her on account of insufficient dowry. He submitted that the suicide note Ex.P-2 is proved to have been written by the deceased and therefore, there is no force in the appeal.

Now let us deal with first argument of learned counsel for the appellants. Section 304-B of Indian Penal Code is extracted 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 harrassment 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.]”

Legislature has in its wisdom has used the word 'soon before her death', she was subjected to cruelty or harrassment by her husband or any other relative of her husband. The word 'soon before her death' has been interpreted by the Hon'ble Supreme Court in judgment 2004 SCC (Criminal) 1417 and the Hon'ble Supreme Court has laid down that before a person is convicted under Section 304-B of the Indian Penal Code, prosecution must establish that such cruelty or harrassment was soon before her death. The relevant extract of the relevant judgment is :-

“The necessity for insertion of the two provisions has been amply analysed by the Law Commission of India in its 21st Report dated 10th August, 1988 on 'Dowry Deaths and Law Reform'. Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry related deaths, legislature thought it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background presumptive Section 113B in the Evidence Act has been inserted. As per the definition of 'dowry death' in Section 304B Indian Penal Code and the

wording in the presumptive Section 113B of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the concerned woman must have been “soon before her death” subjected to cruelty or harassment “for or in connection with the demand of dowry”. Presumption under Section 113B is a presumption 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 presumption can be raised only if the accused is being tried for the offence under Section 304 B Indian Penal Code)

(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 careful reading of the aforesaid judgment, it is clear that the prosecutin was required to prove that soon before the death of the deceased she was subjected to any cruelty or harrassment. In the considered opinion

onus. It is submitted by learned counsel for the appellants that telephone call made by the daughter to her father and her father's visit to the matrimonial home of the daughter is not proved. Prosecution has not led any evidence to prove the call details. Mobile of the daughter was not taken in possession. Call details of the father were not checked. Suicide note also does not remotely refer to her father's visit to her matrimonial home a day before the incident.

However, this Court does not agree with the learned counsel for the appellants that it is not proved that diary belongs to the deceased. On page 2 of the diary below the words 'I Love you' she has written 'PS'. 'P' denotes Parmawati whereas 'S' denotes appellant No.1 husband Sunil.

Still further, suicide note which is part of the aforesaid diary bears signatures of Parmawati in Hindi as well as in English. Prosecution has proved on file signatures of Parmawati on the form filled in for opening bank account in the year 1999. The signatures have been got compared for Forensic Science Laboratory and the opinion is that it is Parmawati, who has signed the suicide note.

Although, learned counsel for the appellants further tried to create doubt about the prosecution case with a submission that deceased Parmawati was not happy as she was first engaged to a boy of her liking but later on since her mother did not like that boy, she was married to appellant No.1 against her wishes. Although, date of marriage has not come but from the reading of the statement of Amar Nath, father and mother one can make out that the date on Smt. Parmawati allegedly committed suicide, the marriage had taken place between 3-4 years before the date of the incident.

Parmawati was settled in her matrimonial home. Merely because she was engaged before her marriage, with another boy that itself cannot be taken to be evidence of the fact that she was not happy with the marriage as the same was against her wishes. In the suicide note, she does not even remotely refer to the aforesaid fact. In the suicide note, which is proved on file she has stated that her husband and her mother-in-law keep taunting her for bringing insufficient dowry.

In view of the aforesaid discussion, this Court is of the considered opinion that although prosecution has failed to establish offence under Section 304-B read with Section 34 of the Indian Penal Code. However, offence under Section 498-A is made out. Therefore, conviction under Section under Section 304-B read with Section 34 IPC is set aside whereas under Section 498-A IPC is maintained.

As per order dated 17.02.2016 and 11.09.2015 both the appellants are on bail as they have undergone more than 3 years which was awarded under Section 498-A read with Section 34 of the Indian Penal Code. Hence, the bail bonds submitted by the appellants shall stand discharged.

Accordingly, the appeal is partly allowed.

12.05.2018
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No