

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S No.1313-SB of 2003(O&M)

Date of decision: 14.03.2017

Kuldeep Kumar and othersAppellants

VERSUS

State of PunjabRespondent

CORAM: HON’BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sunil Chadha, Senior Advocate with
Ms. Swati Verma, Advocate for the appellants.

Mr. Mikhail Kad, AAG, Punjab.

REKHA MITTAL, J.

The instant appeal has been directed against the judgment of conviction and order of sentence dated 07.06.2003 passed by the Additional Sessions Judge, Fast Track Court, Ludhiana whereby the petitioners have been convicted and sentenced for commission of offence punishable under Section 304-B of the Indian Penal Code, 1860 (in short 'IPC') extracted hereunder:-

Name of Convict	Under Section	Sentence (R.I.)	Fine (in Rs.)	In Default (R.I.)
Kuldip Kumar	304-B IPC	7 years	5,000/-	1 year
Veena Sharma	304-B IPC	7 years	5,000/-	1 year
Lekh Raj	304-B IPC	7 years	5,000/-	1 year

Briefly stated, case of the prosecution is that on 02.07.1999 Raj Kumar son of Bansi Lal got recorded his statement that Suman, his youngest sister was married to Kuldip Kumar Sharma in December 1998, according to Hindu customs. Dowry articles in the shape of Istridhan were given according to their capacity. The accused were not satisfied with dowry and after marriage they demanded Rs.25,000/- on the ground that they had spent this amount on marriage and parents of Suman should compensate for the same. Suman told her parents and brothers about demand of Rs.25,000/- and further informed that if she wanted to live happy in the matrimonial house, amount should be paid to the accused. Mother and brothers of Suman gave gold ear-rings and some other articles to Suman and sent her back to her in-laws house. They also assured Suman that they would go to her in-laws house and make them understand to settle the matter. About 2½ months prior to the occurrence, Champa Devi, his mother and cousin brother Radhey Sham son of Ram Niwas went to meet Suman at village Lohara. Suman told them that her in-laws usually taunt her and also gave her beatings. She further disclosed that she is fed up from this kind of life. Mother of the complainant told in-laws of Suman that they have already given dowry at the time of marriage in accordance with their capacity and they should not make more demand. Champa Devi and Radhey Sham brought Suman with them to Ferozepur. After some days, Kuldip Kumar – accused No.1 along with his mother Veena Rani came to Ferozepur and apologized in the presence of brotherhood. They also assured mother of the complainant that they would behave properly in future. Suman was sent back to her in-laws' house. About one week before the occurrence, Suman came to Ferozepur to see

her parents and revealed that her in-laws are demanding Rs.25,000/- and also threatening her. The complainant assured her that some arrangement shall be made for payment of Rs.25,000/- and she should not worry. She was sent back to her in-laws' house three days before the occurrence. On 02.07.1999 at about 10:30 AM, the complainant received telephonic call from Ludhiana that they should immediately reach village Lohara. The complainant along with his cousin Radhey Sham, President Jatinder Mohan and Charandass Handa reached village Lohara and noticed that Suman was hanging with a fan and she had died. The complainant stated that his sister had been killed by Kuldip Kumar Sharma, Veena Sharma, Lekh Raj and Pardeep Sharma and Ram Kishan Sharma.

On the basis of statement of the complainant, FIR No.260 of 1999 was registered in Police Station Sadar, Ludhiana. Postmortem of the dead body was got conducted. After inquest proceedings, site plan of the place of occurrence was prepared. On completion of investigation, challan was presented in the Court for commencement of trial.

Copies of documents in compliance with Section 207 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') were supplied to the accused by the Judicial Magistrate. As the offence under Section 304-B IPC is exclusively triable by the Court of Sessions, the case was committed to the said Court.

On finding a prima facie case, accused were charged for committing offence punishable under Sections 498-A, 304-B IPC to which they pleaded not guilty and claimed trial.

To prove its case, prosecution examined Raj Kumar PW-1, Radhey Sham PW-2, Dr. Gurjit Singh, Medical Officer, PW-3, Jatinder Mohan PW-4, SI Manjit Singh PW-5, HC Baldev Singh PW-6, Constable Balwinder Kumar PW-7, Jasmail Singh Photographer PW-8, ASI Sukhbir Singh PW-9, Harmohinder Singh Draftsman PW-10, SI Joginder Singh PW-11. The prosecution proved documents Ex.PA to PJ and case property Ex.P1 to P18.

On evidence of the prosecution being closed, statements of the accused under Section 313 Cr.P.C were recorded in which they denied the incriminating circumstances put to them and pleaded their false implication. In defence, they examined Jarnail Singh, Junior Assistant DW-1, Satinderpal Singh DW-2, Ashok Kumar Bhatia DW-3.

The trial Court, on due consideration of rival submissions made by counsel for the parties, in the light of evidence adduced by the prosecution as well as in defence came to record its conclusion in para 16 of the judgment by holding that accused Kuldip Kumar, Veena Sharma and Lekh Raj are held guilty for committing offence under Section 304-B IPC and convicted accordingly while case against Pardeep Sharma - accused No.4 and Ram Kishan – accused No.5 has not been proved beyond reasonable doubt and they are acquitted of the charge by giving benefit of doubt. The petitioners were sentenced for offence under Section 304-B IPC, noticed hereinbefore.

Feeling aggrieved by the verdict of the trial Court, the appeal was preferred by the convicts in June, 2003 and the same was admitted on 24.07.2003. It has now matured for hearing but in the interregnum one of

the petitioners namely Lekh Raj passed away, therefore, appeal filed by Lekh Raj stands abated and is disposed of accordingly.

To assail the judgment holding the husband and mother in law of the deceased guilty of offence under Section 304-B IPC, counsel has primarily two-fold submissions to make. The first submission is that there is no evidence on record that the deceased suffered any harassment much less cruelty 'soon before her unnatural death' on 02.07.1999. Another submission made by counsel is that as per the allegations brought forth by the complainant, the accused made a demand of Rs.25,000/- on the ground that they needed to be compensated for money spent on marriage. It is argued with vehemence that the alleged demand made by the accused does not fall within the purview of demand of dowry in connection with marriage, therefore, one of the essentials of offence under Section 304-B IPC becomes missing. In support of his contention, he has relied upon judgments of Hon'ble the Supreme Court of India **State of Andhra Pradesh Vs. M. Madhusudhan Rao, 2008(4) RCR (Criminal) 931;** **Satvir Singh Vs. State of Punjab, 2001 (4) RCR (Criminal) 355,** **Kamesh Panjiyar @ Kamlesh Panjiyar Vs .State of Bihar, 2005(1) RCR (Criminal) 861.**

Counsel for the State, on the contrary, has supported the judgment with the submission that deceased met an unfortunate end within a short span of her matrimony as she was married in December 1998 and died on 02.07.1999. It is further argued that narration of events by the complainant stands duly corroborated by Radhey Sham PW-2 and Jatinder Mohan PW-4. It is further argued that the material witnesses were subject to cross examination at length but nothing tangible and material has been

elicited to demolish their statements much less their veracity and credibility. The last submission made by counsel is that the allegations made at the first instance and so also the evidence adduced by the prosecution is more than sufficient to establish beyond doubt the ingredients of offence under Section 304-B IPC, therefore, judgment passed by the trial Court cannot be faulted with.

I have heard counsel for the parties, perused the paper-book and records of the trial Court.

It is undisputed position of the case that marriage of deceased Suman was performed with Kuldip Kumar in December 1998 and Suman committed suicide by hanging on 02.07.1999 when she was admittedly residing with her husband in the matrimonial home.

Before advertng to the submissions made by counsel for the parties, it is essential to take note of provisions of Section 304-B IPC and 113-B of the Indian Evidence Act, 1872 (in short 'Evidence Act') as both these provisions were inserted by the Dowry Prohibition (Amendment) Act No.43 of 1986 with a view to combat increasing menace of dowry deaths.

In order to attract application of Section 304-B IPC, essential ingredients are as follows:-

- (i) The death of a woman should be caused by burns or bodily injury or occurs otherwise than under normal circumstances;
- (ii) Such a death should have occurred within 7 years of marriage.

- (iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.
- (iv) Such cruelty or harassment should be for or in connection with demand of dowry.
- (v) Such cruelty or harassment is shown to have been meted out to a woman soon before her death.

Section 113-B of the Evidence Act provides for presumption as to dowry death. A relevant extract therefrom reads as follows:-

“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 soon 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.

Explanation.—For the purposes of this section, “dowry death” shall have the same meaning as in section 304B, of the Indian Penal Code, (45 of 1860).]”

In the case at hand, the deceased admittedly died otherwise than under normal circumstances within 7 years of marriage rather within 7 months thereof. So far as the harassment ‘soon before death’ is concerned, Hon'ble the Supreme Court in **Kamesh Panjiyar @ Kamlesh Panjiyar's case** (supra) has held that 'soon before' is a relative term and it would depend upon circumstances of each case and no strait-jacket 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 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 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 expression 'soon before' used to Section 114 Illustration (a) of the Evidence Act is relevant. 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 is that the expression 'soon before' would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live-link between the effects of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence.

Reverting to the instant case, the victim died within 7 months of marriage. The complainant has reiterated that about 2½ months prior to the occurrence, Champa Devi, his mother and Radhey Sham, his cousin brother went to meet Suman and she told them that her in-laws usually taunt her and also give her beatings. She further told that she was fed up from that kind of life. Radhey Sham, cousin brother of Suman has corroborated version of Raj Kumar with regard to what happened in the house of Suman at the time when Radhey Sham accompanied by Champa Devi visited Suman and on revelations made by the deceased with regard to her plight, they interacted with the in-laws' family of Suman that they have already given sufficient dowry at the time of marriage. The complainant has further proved that few days before the occurrence, the deceased visited her parental home and narrated her tale of woe and she

went back to her matrimonial home just three days before the occurrence. As the deceased was quite upset due to illegal demand of Rs.25,000/- by the accused and harassment caused to her on account of failure to satisfy their demand, just one week before the occurrence, it is difficult to accept contention of the appellants that the prosecution has failed to prove that any harassment was caused to the deceased in connection with demand of dowry soon before her death.

This brings the Court to the second submission made by counsel for the appellants. Dowry has neither been defined in Section 304-B nor 498-A IPC. However, the word 'dowry' in Section 304-B IPC has to be understood as it is defined in Section 2 of the Dowry Prohibition Act, 1961 (in short 'the Act') . Under Section 2 of the Act, dowry means any property or valuable security given or agreed to be given in connection with the marriage. However, customary payments in connection with birth of a child or other ceremonies prevalent in different societies do not fall within the ambit of dowry. There are three occasions related to dowry i.e. one is before the marriage, second is at the time of marriage and the third "at any time after the marriage". The third occasion may appear to be unending period but the crucial words are "in connection with the marriage of the said parties".

As per case of the prosecution, the accused made a demand of Rs.25,000/- to compensate them for the expenses incurred on marriage. Such a demand could be made by the accused before marriage by saying that expenses on marriage to the extent of Rs.25,000/- would be incurred by the bride's family. Had it been so, it would have certainly fallen within the purview and ambit of word 'dowry', defined in Section 2 of the Act. It

is difficult to comprehend that if such a demand had been made subsequent to performance of marriage, it would not fall within the purview of word 'dowry'.

Counsel for the appellant has cited the aforesaid judgments of Hon'ble the Apex Court but has failed to point out as to how the appellants can draw any similarity in their case vis-à-vis the facts relevant in those cases and derive advantage to their contentions from what has been held in the judgments cited at bar. That being so, it can be safely held that the referred authorities do not have any bearing on the case at hand in order to accept the plea that either the essentials of Section 304-B IPC are not proved or they are entitled to seek acquittal on any other score whatever.

To be fair to the appellants, a vain attempt was made by their counsel to point out certain contradictions in the testimonies of material witnesses. As per the settled position in law, some discrepancies are bound to creep in when a witness is examined after passage of some time. If there is no contradiction in the statement of a witness recorded before the police, vis-à-vis his testimony before the Court, he may be branded as a highly tutored one. Counsel for the appellants has failed to point out any material discrepancy in the case of the prosecution of which the benefit can be made available to the accused.

No other point has been raised.

For the foregoing reasons, appeal filed by Kuldeep Kumar and Veena Rani is without merit and accordingly the same is dismissed. Their conviction and sentence for offence under Section 304-B IPC is ordered to

be affirmed. The appellants are on bail. They be taken in custody for suffering the remaining sentence.

MARCH 14, 2017

‘D. Gulati’

Whether speaking/reasoned

Whether reportable

:

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yes/no

yes/no