

CRA-S-2086-SB-2003
CRR-2210-2003

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

CRA-S-2086-SB-2003
Date of decision: 15.9.2017

Mehar Chand and another

...Appellants

Versus

State of Haryana

...Respondent

CRR-2210-2003

Kuldeep Singh

...Petitioner

Versus

Mehar Chand and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr.RK Gupta, Advocate for the appellants
in CRA-S-2086-SB-2003
for the respondents in CRR-2210-2003

Ms.Dimple Jain, AAG, Haryana

None for the petitioner in CRR-2210-2003

JITENDRA CHAUHAN, J.

This judgment shall dispose of both the aforementioned
cases (CRA-S-2086-SB-2003 filed by the accused-appellants and CRR-
2210-2003, filed by the complainant), which have arisen out of common

judgment and order dated 30/31.7.2003 passed by learned Additional Sessions Judge, Ambala, vide which the accused-appellants, namely Mehar Chand and Leela Devi were convicted under Section 304-B of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years each and to pay fine of Rs.5000/- each; in default of payment of fine, the defaulter to further undergo RI for six months, whereas Pawan Kumar and Kanta were given benefit of doubt and were acquitted.

The facts in brief are that complainant Kuldeep Singh, brother of the deceased, stated that his younger sister Sushma (since deceased) was married with accused Mehar Chand on 5.3.1999. In the marriage, his parents gave all dowry articles as per their capacity. After some time of marriage, accused Mehar Chand and his family members started harassing his sister on account of not bringing sufficient dowry. They used to raise demand of a scooter, fridge, coloured television. They used to give beatings to her due to non-fulfilment of their demands and also told her that they will kill her. She complained about the maltreatment meted out to her at the hands of the accused to the complainant and his family members. They made her understand that she has to spend her life in the house of her in-laws and he took her to her in-laws' house. But the accused persons never changed their behaviour and again started maltreating and harassing the deceased. After about a week of her being left at the house of her in-laws, he (complainant) received a telephonic message that Sushma had been murdered by her in-laws. On the basis of

the statement of Kuldeep Singh, formal First Information Report Ex.PW2/B was registered.

After completion of investigation, a report under Section 173 Cr.P.C. was filed in the Court against the accused -appellants alongwith Pawan Kumar s/o Om Parkash and Kanta w/o Pawan Kumar, 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, SI Swaran Lal; PW2 HC Shamsheer Singh, PW3 HC Mahal Singh; PW4 C. Naresh Kumar; PW5 C.Ashwani Kumar, PW6 Ashok Kumar, Photographer, PW7 Dr.NK Garg; PW8 C Manohar Lal, Draftsman; PW9 HC Raj Pal Singh; PW10 Kuldeep Singh, complainant; PW11 Surmukh Singh father of deceased Sushma; PW12 ASI Krishan Lal; PW13 Mahavir 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 Ashok Kumar; DW2 Amar Nath; DW3 Satish Chander and DW4 Neelam Kapoor.

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 30/31.7.2003, convicted and sentenced the accused-

appellants as narrated above, whereas Pawan Kumar and Kanta Devi were acquitted of the charges levelled against them.

Feeling aggrieved against the impugned judgment and order passed by the trial Court, the accused - appellants have filed the appeal, whereas the complainant dissatisfied with the sentence awarded to the accused-appellants and acquitted of co-accused Pawan Kumar and Kanta, preferred the revision petition for enhancing the sentence awarded to them and conviction of the co- accused Pawan Kumar and Kanta as well.

On behalf of accused-appellants, it is submitted that in the FIR, general and vague allegations have been levelled against the accused-appellants. Accused Mehar Chand and Leela Devi are husband and mother-in-law of the deceased respectively. The prosecution has miserably failed to show that the deceased was subjected to cruelty 'soon before her death'. There is nothing on record to establish that the deceased was subjected to cruelty or harassment by the appellants for want of more dowry. No specific time and date has been mentioned for raising such kind of demand. She committed suicide due to frustration on account of not begetting any child after a long time of marriage. No independent witness was examined by the prosecution. Appellant No.2, mother-in-law of the deceased, is more than 80 year old. She never raised a single accusation of any type of dowry as stated in the prosecution story. She was not residing with appellant No.1 when his wife committed suicide. She has been convicted only on the basis of

presumption, however, there is no incriminating evidence against her.

On the other hand, learned State counsel submitted that the death of deceased occurred within a period of seven years of marriage of accused Mehar Chand 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 wilful 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.”

Admittedly, the marriage of the deceased with accused Mehar Chand was solemnized on 5.3.1999. The cause of death of Sushma was due to asphyxia associated with poisoning on 22.2.2002. PW10 and PW11, brother and father of the deceased, who were the material witnesses, have consistently deposed that Sushma was continuously treated with cruelty by raising demand of more dowry. They have specifically deposed about the demands of coloured

television, refrigerator and scooter. Before her death, she stayed in her parental house for about 15-20 days and during her stay, she narrated about the maltreatment and harassment meted out to her by raising demands of those articles but she was left at her matrimonial house by making her understand that she has to pull on with her in-laws (accused). It is also not disputed that the death has occurred in the house of the accused and was not under the normal circumstances and was in fact on account of asphyxia associated with poisoning.

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 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."

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 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 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 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".

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 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."

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.

Reverting to the instant case, it is also not disputed that the death had occurred in the house of the accused and was not under the normal circumstances and was on account of asphyxia associated with poisoning.

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 Sushma died an unnatural death on account of asphyxia associated with poisoning 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.

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.”

It is well known fact that the harassment and cruelty meted out to the woman happens within four walls of the matrimonial home, therefore, the question of examination of an independent witness is not of a consequence. Thus, the submission raised by learned counsel for the appellant in this context being without merit deserves rejection.

However, the Court feels that the case of appellant- Leela Devi, mother-in-law of the deceased, aged about 80 years is all together different footing. There is no specific allegation with regard to demand of dowry by the appellant, otherwise also, the appellant, who is on ripe age of 80 years, any dowry as alleged even it had been given, would have of any consequence to her. Therefore, this Court feels that the case of the prosecution against appellant-Leela Devi is not proved beyond shadow of reasonable doubt. Accordingly, the appeal qua appellant-Leela Devi is accepted, whereas for the reasons explained above, it is dismissed qua Mehar Chand (husband).

There is no representation on behalf of the complainant. Neither any case for enhancement of sentence awarded to Mehar Chand (husband) is made out nor the acquittal recorded by learned trial Court qua Pawan Kumar (Jeth) and Kanta (Jethani) can be found fault with.

In view of the above discussion, CRA-S-2086-SB-2003 qua appellant No.1- Mehar Chand is dismissed, whereas qua Leela Devi -appellant No.2 stands allowed and CRR-2210-2003 filed by Kuldeep Singh is dismissed. Bail/ surety bonds of appellant No.2-Leela Devi stand discharged.

Accused- Mehar Chand is stated to be on bail. He be taken into custody to serve the remaining part of the sentence.

A photocopy of this judgment be placed on the file of the connected case.

15.9.2017
gsv

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No