

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

CRA-S-2085-SB-2003 (O&M)

Date of Decision: 07.02.2018

Nachhattar Singh and others

...Appellant(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Paras Talwar, Advocate
for the appellants.

Mr. K.S. Aulakh, DAG, Punjab.

Mr. Angel Sharma, Advocate
for Mr. D.D. Sharma, Advocate
for the complainant.

ANITA CHAUDHRY, J.

Delay condoned.

This appeal is against the conviction and sentence dated 18.09.2003 recorded by the Additional Sessions Judge, Barnala in FIR No.46 dated 18.04.2001, registered at Police Station Dhanaula, under Sections 304-B and 498-A IPC.

The trial Court had convicted the appellants under Section 304-B IPC and had sentenced them to undergo rigorous imprisonment for a period of 10 years along with a fine of Rs.5,000/- each. In default of payment of fine, they were to further undergo rigorous imprisonment

for a period of six months. They were also convicted under Section 498-A IPC to undergo rigorous imprisonment for two years along with fine of Rs.1,000/- each. In default of payment of fine, they were to further undergo rigorous imprisonment for a period of three months.

The factual score is necessary to understand the relationship. Nachhatar Singh is the father-in-law of the deceased Birpal Kaur. Nachhatar Singh has two sons Sukhchain Singh and Sukhwinder Singh. Both his sons were married to two sisters, Harpreet and Birpal Kaur, daughters of Chatin Singh, the complainant. Birpal Kaur had been married for over 1½ year. She died an unnatural death allegedly in the matrimonial home.

A complaint was lodged by the father that his daughter was being harassed by the in-laws and she was beaten up for not bringing a scooter. It was claimed that she was being pressurized to get a Will executed with regard to the land owned by her parents. The husband was not named in the FIR. The father-in-law, the mother-in-law, the unmarried sister-in-law and Sukhchain Singh brother-in-law of the deceased were named. The police filed the challan against Nachhatar Singh and Sukhchain Singh. Supplementary challan was filed against the mother-in-law whereas the sister-in-law (Nanad) was summoned under Section 319 Cr.P.C.

Charge was framed under Section 304-B and 498-A IPC. The main witnesses for the prosecution were Chatin Singh – PW5, his brother Avtar Singh – PW6, the police officials and the Medical Officer.

In the statement recorded under Section 313 Cr.P.C., the allegations were denied and it was stated that the deceased was also named as Kuljit Kaur and she along with her husband - Sukhwinder started living in the house of the complainant and Sukhwinder was a Ghar Jamai as Chatin did not have a son. A year after their marriage, Birpal Kaur and Sukhwinder on the instigation of Nachhatar Singh started demanding a share in the property and they were being pressurized to hand over possession. On 02.04.2001 a Panchayat was held and a writing was made and recorded by Bikar Singh but Chatin Singh was not satisfied. It was stated that Birpal Kaur and her husband were separated by the father and they started residing with Karnail Singh, brother of Nachhatar Singh, who lived on the outskirts of the village. The accused had also stated that Birpal Kaur had tuberculosis and she was getting treatment and she had consumed poisonous substance inadvertently and the case was false.

The accused examined 10 witnesses. The revenue officer stated that Birpal Kaur did not have any land on her name. Two doctors were examined to show that Birpal was getting treatment for tuberculosis. The husband of the deceased was examined as a defence witness.

The trial Court relied upon the statement made by the complainant and his brother and rejected the contradictions in the statements and convicted all the accused to the sentence mentioned here-in-before.

I have heard counsel for both the sides.

Opening his submissions, the counsel for the appellants urges that allegations of demand of dowry and cruelty have been levelled not against the husband but against the father-in-law, brother-in-law who was married to the sister of the deceased, the mother-in-law and the un-married sister-in-law and the allegations are vague and there are no specific allegations against the sister-in-law. It was urged that the incident did not take place in the house of the father-in-law and the Investigating Officer purposely did not prepare a site plan as it would have exposed the falsity of the allegations. It was urged that the allegations are that there was demand of a scooter and the in-laws were forcing the deceased to ask her parents to execute a Will with respect to her share. It was urged that the complainant had only two daughters and there was no need for a Will as ultimately the property would have come to the daughters who were both married in the same house and the relatives were not use the scooter. It was urged that the prosecution has kept back the main witness i.e. the real sister of the deceased whose statement would have been crucial. It was urged that there is no complaint of any incident for 1½ year. It was urged that Sukhwinder along with his wife Birpal Kaur were living in the complainant's house and were helping him in the fields but then the instigations started and Sukhwinder was asking for a share then the relations soured and a compromise was effected before the Panchayat and the person who had recorded the agreement dated 02.04.2001 which is signed by Sukhwinder was examined. It was urged that the couple started living in the house of Karnail Singh (uncle) who did not have any child and it

is the husband and Karnail Singh's wife who took Birpal Kaur to the hospital. It was urged that the incident did not take place in their house and their house is separate. It was urged that the complainant had not visited their house, therefore, he could not give the details. It was urged that it has come in the statement of complainant that Birpal Kaur had 3 Killas of land in her name but this fact was denied by the uncle of the deceased and they had summoned the revenue record and the Patwari had stated that there was no land in the name of the deceased and the complainant had indulged in exaggerations. It was urged that the complainant had spoken about the Panchayat but he did not examine any Panchayat Member and it is not a case of dowry demand. It was urged that the girl was engaged for almost four years and there was no demand during that period or even at the time of marriage or a year after marriage. It was urged that the statement of the sister of the deceased married in the same house was not recorded and the Investigating Officer had stated that he had not recorded her statement under Section 161 Cr.P.C. but her name figures in the list of witnesses and she was given up by the prosecution. It was urged that non-examination of the sister of the deceased is fatal as she would not have been able to withstand the cross-examination and would have blurted out the truth. It was urged that the husband was not named nor he was joined in the investigation and had he been joined then the true facts would have come to the fore and the witnesses have spoken about the presence of a Minister after the death and there was a pressure on the police to register the case and arrest the family members. It was urged

that the Investigating Officer had stated that it did not come out clear as to in which house the incident had occurred and the police had tried to cover up and gave a twisted account. It was urged that presumption under Section 13-B of the Evidence Act would not be attracted and the necessary ingredients of Section 304-B IPC were not made out. The counsel also submits that the medical record would show that medicines were prescribed which includes Isonex-300, which is a medicine for tuberculosis.

On the other hand, the submission of the complainant and the State counsel is that the other daughter of the complainant was also turned out of the house and she had returned to her parents house after the incident and she had made a statement to the police recorded under Section 161 Cr.P.C. It was urged that the death had occurred within 7 years of marriage in the matrimonial home and there was demand of dowry and the girl had been beaten up and the girl was subjected to cruelty and harassment in connection with dowry.

At the outset, it would be appropriate to refer to the relevant provisions of the Penal Code, Dowry Prohibition Act and Evidence Act are quoted hereunder:

Section 304-B IPC reads 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 harassment 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."

A legal fiction has been created in the said provision to the effect that in the event it is established that soon before the death, the deceased was subjected to cruelty or harassment by her husband or any of his relative; for or in connection with any demand of dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death. The Parliament has also inserted Section 113 B of the Indian Evidence Act by Act No.43 of 1986 with effect from 1.5.1986 which reads as under :-

"113.B- 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 had 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 304-B of the Indian Penal Code (45 of 1860)."

The necessity for insertion of the two provisions has been amply stated by the Law Commission of India in its 21st Report dated 10-8-1988 on "Dowry Deaths and Law Reform".

Keeping in view the impediments in the pre-existing law in securing evidence to prove dowry-related deaths, the Parliament in its wisdom thought to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background that a provision of presumptive evidence by way of [Section 113B](#) in the [Evidence Act](#) has been inserted. As per the definition of "dowry death" in [Section 304B](#) IPC and the wording in the presumptive provision of [Section 113B](#) of the Evidence Act, one of the essential ingredients, amongst others, is that the 'woman' must have been "soon before her death" subjected to cruelty or harassment "for, or in connection with, the demand for dowry".

Presumption in terms of [Section 113B](#) is one 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 10 presumption can be raised only if the accused is being tried for the offence under [Section 304B](#) IPC).*
- (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 conjoint reading of Section 304-B of IPC and Section 113-B of the Evidence Act shows that in order to prove the charge of dowry death, the prosecution has to establish that the victim had died within 7 years of marriage and she was subjected to cruelty or harassment soon before her death and such cruelty or harassment was for dowry. Therefore, in each case, the Court has to examine and analyze the facts and circumstances leading to the death of the victim and decide whether there is a proximate case between the demand of dowry and the act of cruelty or harassment.

The allegations made in the FIR are that there was demand of a scooter and the in-laws were asking the deceased to get a Will executed by the father. The trial Court has accepted the statement of the father and paternal uncle and they are the only two witnesses. What is surprising is that there are no allegations of demand of dowry or harassment on the husband. He was not challaned. Even before the Court no statement was made against the husband which indicates that the relations between the husband and wife were good. According to the complainant the incident had occurred in the house occupied by the father-in-law but it is surprising that the Investigating Officer did not prepare a site plan of the house nor brought any evidence to show where the occurrence had taken place. While appearing in the witness box he had stated that the place of occurrence did not come out clearly in his investigations. He had stated that the investigation did not show in which house the incident had occurred. The investigation should have been fair. There was no reason why the investigator could not pinpoint the place of occurrence.

The prosecution in order to succeed was to show that soon before the incident there were some act of cruelty and harassment related to dowry. The State counsel had pointed to the injury noted by the Medical Officer. The injury which is referred to in the PMR reads as under:-

“Reddish brown scabbed abrasion measuring 1 cm x .5 cm was present on the front of right elbow joint. On dissection, no abnormality was detected.”

The duration of this injury could not be given by the Medical Officer. The color of the scabbed abrasion goes to show that it was a old abrasion and it was encrusted that is covered with a scab, on the inner side of the arm near the elbow joint. This injury could not have been caused if the deceased had been beaten. The death indisputably is on account of consumption of insecticide. It is also not disputed that it is the husband and Karnail Singh who had taken the girl to the hospital. Their presence is noted in the out-patient register.

The incident is said to have occurred before noon. The parents had been informed and they had reached the hospital. The FIR was lodged after 7:00 PM, the same day. The police had got the information and had reached the hospital but the complainant took time to make a statement. There is no explanation.

The complainant had spoken about a Panchayat which had taken place one month prior to the incident and he had named the persons who were present. According to him all of them had gone to the house of the accused and the complainant had stated that he could not transfer the land in his name and all of them had returned. The prosecution failed to examine the persons named by the complainant, therefore, there is no evidence to prove that any Panchayat was held. There is no clinching evidence that any Panchayat was called. The complainant failed to give the date on which the Panchayat had been held. The complainant had made a vague statement and could not have been accepted.

There is absolutely no evidence to show that the deceased had been subjected to any cruelty in relation to demand of dowry. Had there been a demand of a scooter, it was the husband who would use it and not the father-in-law or the brother of the husband. Had there been any harassment or cruelty by the parents and brother, the husband would have stood by the complainant. He instead appeared as a defence witness and supported the defence and spoke about the writing executed on 02.04.2001. He admitted his signature on it. He stated that he along with his wife had started living in the house of Karnail Singh and he was working in the fields when he got the message and came home and took his wife to the hospital. He stated that the complainant took Harpreet Kaur along with him to his village.

The two sisters were married to two brothers. The complainant did not make any allegations that his other daughter was being harassed. There are no allegations against the husband. From the material produced on record by the defence it becomes clear that the girl was suffering from tuberculosis. She was admitted in the hospital in November 2000 and remained there for about a week. The medicines which were prescribed are given to a TB patient. The death was not on account of the tuberculosis. The girl had consumed poison. It can not be said to be a dowry death on the evidence led. Something did go wrong. It appears that there was pressure on her from her family side and they were demanding a share in the property owned by Nachattar Singh and it is therefore that Nachhatar Singh had separated

his son. Sukhwinder was not living in his father's house. It is for this reason that the Investigating Officer could not pointedly say that the occurrence had taken place in Nachhatar's house. The complainant has tried to change the place of occurrence. The crucial witness would have been the sister of the deceased. The reason for her non-examination was her mental state. Her statement was to be recorded after a year after the incident. There was no reason why she could not be produced in the witness box. Her non-examination is fatal. The complainant side have not come out clean and have withheld the main cause which forced their daughter to take the extreme step. The prosecution had failed to prove the essential ingredients of Section 304-B IPC. Therefore, the presumption under Section 113-B IPC would not follow merely because the incident had occurred within seven years of marriage and under unnatural condition. The pain and agony of the father cannot be understood and that alone is not enough to record conviction. The evidence has to be convincing and there has to be some acceptable evidence which could indicate that there was some incident soon before her death. That evidence is clearly missing.

There is no evidence to show that there was demand of dowry. The testimony of the complainant and his brother is neither natural or convincing. They have indulged in improvements. There are contradictions galore. The prosecution has not been able to prove the charges beyond reasonable doubt. Therefore, the judgment of the trial Court is set aside and the accused are acquitted.

The appeal is allowed.

07.02.2018

Sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No