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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRA-D-288-DB-2013 (O/M)  
Date of decision : 1.8.2018

Vikram

..... Appellant (s)

Versus

State of Haryana

..... Respondent (s)

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI  
HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Ms. Rajni Paul and Mr. Rajeev Sharma, Advocates,  
for appellant.

Mr. Vivek Saini, DAG Haryana.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J

This appeal is directed against judgment dated 19.3.2013, passed by learned Additional Sessions Judge, Jind, vide which accused-appellant was convicted under Sections 304-B and 406 IPC and vide order of sentence dated 21.3.2013, sentenced as under :-

| <u>Offence</u> | <u>Rigorous Imprisonment</u> | <u>Fine</u> | <u>In default of payment of fine</u> |
|----------------|------------------------------|-------------|--------------------------------------|
| 304-B IPC      | Life                         | Rs. 5000/-  | SI for two months                    |
| 406 IPC        | 1 (one year)                 | Rs. 1000/-  | SI for 15 days                       |

Both sentences shall run concurrently.

Nisha Devi, wife of present appellant Vikram, died on 27.9.2011

after consuming some poisonous substance. The police on receiving the intimation reached the spot where Om Parkash, father of deceased Nisha, made a statement to the police to the effect that he is running a Tea rehri (cart). He has got three daughters and two sons. His daughter Nisha was married with accused Vikram about 16 months back. He had given sufficient dowry as per his capacity. Nisha Devi gave birth to a female child, who was aged about 6/7 months at the time of her death. Om Parkash stated that his son in law and parents in law of his daughter used to harass and beat her daughter for brining less dowry. His daughter told him about same many times. He had gone to village of accused Khera Khemawati and requested the in laws of her daughter to understand, but of no avail. About 20 days ago, Nisha Devi informed him telephonically that his husband is demanding a motorcycle and beating her. Then, he alongwith his son Jitender again visited village Khera Khemawati at the hosue of accused and told his son in law and parents in law of his daughter that he is a poor man and is unable to give motorcycle. Today i.e. 27.9.2011, at about 10:00 AM, he received a message that his daughter Nisha made a telephone call which was received by his elder daughter that husband and parents in law of Nisha are beating her. He went to work. His son came to him and told him that he has been called at house. On reaching home, his two sisters, who were already married in village Khera Khemawati told him that he should go to house of her daughter Nisha in village Khera Khemawati. On reaching village Khera Khemawati, he found that his daughter Nisha Devi was lying dead. Om Parkash alleged that his daughter has been murdered by accused by serving some poisonous substance.

The police after recording the statement lodged FIR (Ex.PA/2) under Sections 304-B and 406 IPC. The inquest report (Ex.PG) was prepared. The post mortem of dead body was got conducted. The viscera was

sent to chemical examiner. The police also recovered dowry articles, vide recovery memo Ex.PB. After completion of investigation, accused Vikram was challaned. Bala and Lakhmi Chand, father and mother of Vikram, were found innocent.

Accused Vikram was chargesheeted under Sections 304-B and 406 IPC, to which he pleaded not guilty.

In support of its case, prosecution examined as many as 11 witnesses.

In the statement under Section 313 Cr.P.C., accused while denying the evidence led against him stated that he has been falsely involved in this case. Nisha Devi was kept nicely at her matrimonial home. She was not subject to any harassment or cruelty. He claimed that he already owned a motorcycle No. HR33C-1162. It was a simple marriage. He is innocent.

In defence, accused produced registration certificate of motorcycle (Ex.DL) and closed the evidence.

After going through the evidence and hearing the prosecution and defence counsel, the learned Additional Sessions Judge, Jind, convicted and sentenced the accused as aforesaid.

We have heard the learned counsel for accused, learned State counsel and have also carefully gone through the file and lower Court file also.

First of all, medical evidence in the form of statement of Dr. Rohit Raina (PW4), Medical Officer, General Hospital, Ambala, shows that when post mortem was conducted on dead body, following injuries were found :-

- '1. A blackish brown abrasion of size 6x2 cm on lateral aspect of right eye.
2. A blackish brown abrasion of size 6.5x1 cm extending from angle of mouth downwards on right side.
3. A blackish brown abrasion of size 4x3cm on right shoulder.

4. A blackish brown abrasion of size 2x1cm on left knee with sand particles overlying area of salwar of left knee which is torn.
5. A blackish brown abrasion of size 1x1cm just below right ear.
6. A blackish brown abrasion of size 1x1cm present on dorsal aspect of left hand near wrist joint.
7. A blackish brown abrasion of size 2x1cm on left shoulder.
8. 2 small blackish brown abrasion of size .5x1cm present above left eyebrow.
8. In our opinion the cause of death in this case will be given after receipt of report from F.S.L. Madhuban
9. Handed over to police after post mortem examination – 1) well stitched body of deceased. 2) a copy of pmr 3) police paper no 1 to 22 4) a cardboard box with 10 seals intact containing various tissues in jar and vials 5) an envelope containing (police paper, copy of pmr forwarding letter, sample seal) to fsl madhuban 6) pulinda containing pink salwar and pink chunni with 6 seals intact
10. Probable time elapsed between a) between injury and death -variable b) between death and post mortem- 6-36 hrs.'

No ligature mark on the neck was found. As per opinion of the doctor, the time between injury and death is variable. The nature of injuries shows that these are blackish brown abrasions and apparently, these injuries were received by deceased many days prior to her death. The injuries are on the lateral aspect of right eye, angle of mouth downwards on right side, right shoulder, left knee, just below ear, left hand near wrist joint, left shoulder and left eye brow.

As per opinion of the doctor, death was due to consumption of organochloro pesticide (Endosulfan). Regarding the injuries, he has stated that injuries mentioned in the PMR are accidental injuries. The report of FSL also confirmed the cause of death to be due to consumption of organochloro pesticide (Endosulfan). The medical evidence does not suggest that any force was used to feed the said organochloro pesticide to deceased. Therefore, the consumption of said pesticide was the voluntary act of deceased.

In this way, from the medical evidence, it is proved that death of Nisha Devi occurred within 7 years of her marriage.

Section 304-B IPC provides as under :-

'S.304-B- 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.'

Now, the question would arise as to whether said death is a dowry death or it is a case of simple suicide, regarding which there are no allegations by complainant party. The allegations levelled against accused party are that accused and his parents are demanding dowry. It was specifically mentioned in the complaint that accused was demanding motorcycle, whereas the accused has stated that he already had a motorcycle Hero Honda Splendor No. HR33C-1162. When father of deceased was examined in the Court as PW1, he stated that accused was also demanding fridge and AC also, whereas AC and fridge were not mentioned in the complaint and same is taken as improvement and cannot be relied upon. Om Parkash had voluntarily made a statement before the police alleging that a motorcycle was demanded. The complainant is running a tea stall on a cart and, therefore, he does not have much means. The deceased had 6/7 months

old (at the time of her death) child from the marriage. The complainant has stated that earlier, he had visited house of accused and asked the accused not to harass his daughter. Therefore, it appears that there was some matrimonial discord.

Now, the question is as to whether any demand of motorcycle was made or not ?

When Om Parkash was subjected to cross examination, he stated that his two sisters, namely, Sushila and Salochana, are married in the same village i.e. Khera Khemawati. Sushila and Salochana could be the persons, who being residents of same village could know whether the deceased was being harassed by her husband and her in laws or not. Even they were not examined by police under Section 161 Cr.P.C. Om Parkash had further admitted that his daughter visited his house occasionally with her husband and other members of family and he also used to visit the house of her daughter. The daughter of deceased Mehak is now being brought up by accused party.

Next witness examined by prosecution to prove allegations is Sohan Lal (PW2), who is cousin of Om Parkash. His statement is also that accused was demanding fridge, AC and motorcycle Splendor. However, in his statement before the police under Section 161 Cr.P.C., with which he was duly confronted, he did not mention that the demand of motorcycle is of make 'Splendor'.

Jitender, brother of deceased appeared as PW3. He is stated to have accompanied his father. He has also supported the version put forth by his father Om Parkash. His cross examination reveals that dead body of Nisha was cremated in village Khera Khemawati where she was residing with her husband. He stated that it was a simple marriage.

ASI Jai Bhagwan, Investigating Officer, while appearing as

PW5, proved the formalities of investigation. In cross examination, he stated that he has sought opinion of doctor regarding injuries, vide application Ex.PJ and that doctor has given opinion that injuries are more often of a road side accident though it could also be caused by blunt weapon.

Accused has claimed in statement under Section 313 Cr.P.C. that he already has a splendor motorcycle. The copy of registration certificate (Ex.DL) shows that accused was already having Hero Honda Splendor motorcycle bearing No. HR33C-1162. Therefore, it is unlikely that accused, who is already having a Splendor motorcycle, will demand another Splendor motorcycle from his father in law who is running a tea stall on a cart and has no means to buy the same. It appears that due to some matrimonial discord, deceased Nisha Devi committed suicide and that a story of demand of Splendor motorcycle was putforth to make out offence under Section 304-B IPC.

As a result of foregoing discussion, we are of the view that prosecution has failed to prove that death of Nisha Devi is connected with demand of dowry and is a dowry death. Consequently, the ingredients of Section 304-B IPC are not proved. There are no allegations that there was misappropriation of dowry articles.

#### ORDER

- (i) CRA-D-288-DB-2013 is allowed.
- (ii) Impugned judgment of conviction dated 19.3.2013 and order of sentence dated 21.3.2013, passed by the learned Additional Sessions Judge, Jind, convicting the appellant-Vikram for the offence under Section 304-B of Indian Penal Code sentencing him to undergo rigorous imprisonment for life and one year rigorous imprisonment under Section 406 IPC in Sessions Case No. 4 dated 1.2.2012 is set aside.

(iii) Appellant-Vikram is acquitted of the charge for which he was convicted. Fine, if paid, be returned to him.

(iv) He be released forthwith, if not required in any other case.

(A.B. CHAUDHARI)  
JUDGE

(KULDIP SINGH)  
JUDGE

1.8.2018  
sjks

|                             |   |          |
|-----------------------------|---|----------|
| Whether speaking / reasoned | : | Yes / No |
| Whether Reportable          | : | Yes / No |