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Date of decision : 23.8.2018

..... Appellant

Versus

..... Respondent

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

Present:- Mr. S.P.S. Sidhu, Advocate,
for appellant.

Ms. Anju Arora, Additional A.G. Punjab.

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 ?

KULDIP SINGH, J.

This appeal is directed against judgment of conviction and order of sentence dated 30.8.2012, passed by the learned Additional Sessions Judge, Ferozepur, vide which accused-appellant was convicted under Section 304-B IPC and was sentenced to undergo imprisonment for life and to pay a fine of Rs. 10,000/-, in default of payment of fine, to further undergo rigorous imprisonment for six months.

The case was registered on the statement of Vanita Rani, mother of deceased Jyoti. As per statement dated 1.9.2011 (Ex.PA), made by Vanita Rani, Jyoti was married to accused Harish Sharma s/o Balvir Chand Pandit, about 2 ½ years ago. The couple had 1 ½ years old son. She claimed that at the time of marriage of her daughter, they gave sufficient

dowry articles in the shape of iron box, one sofa set, one double bed, TV, Refrigerator, Cooler and about 10 tolas of gold. Gold was given to her daughter Jyoti and her in laws family. But when her daughter was pregnant, her son in law Harish Sharma demanded a motorcycle from them. When her daughter gave birth to a son, they gave a gold chain weighing quarter to one tola to her daughter's son, ear ring (one tola) to Manjit Kaur, mother in law of Jyoti. According to rites, clothes were given and one motorcycle Hero Honda Passion Plus was given to accused, but her daughter was being harassed by husband and her in law's family members, namely, Balvir Chand (father in law), Manjit Kaur (mother in law), Pardeep Shrama (Jeth), elder brother of her son in law, Jyoti alias Aarti (Jethani) and Janak, her father in law's sister. She was also beaten up. Her daughter often used to inform her on telephone about the same. Thereafter, Jyoti gave birth to another baby child, but the child died. Then the in laws of her daughter demanded Rs. 25,000/- to get her daughter discharged from hospital. Now, about 3 months earlier (from 1.9.2011), Jyoti was given severe beatings by her son in law Harish Sharma and her son in law's brother Pardeep Sharma and she left her matrimonial house. Accused party demanded one AC and one car, which they could not fulfill. Then, they filed an application at Police Station Lohian Khas against Harish Sharma, his parents Balvir Chand and Manjit Kaur and his brother Pardeep Sharma. In this process, on the advice of panchayat of village Bazidpur and panchayat of their village and on their taking responsibility, Jyoti was sent with accused party, for which she was not prepared. On 1.9.2011, at about 5:30 AM in the morning, Jangiri Lal (husband of complainant) received a phone call from Harish Sharma that Jyoti had expired. When inquired by Jangiri Lal as to

how Jyoti died, Harish Sharma replied that in the morning, when Jyoti did not wake up, he came to know about her death. When they came to know about her death, they alongwith relations reached her daughter's in law's village Bazidpur. The in laws family members of her daughter were taking the dead body for cremation. They stopped them in the crossing of village and inspected the dead body of their daughter. Around the neck, they found injury marks. They prevented the accused from cremating the dead body and informed the police, on which Additional SHO, Police Station Kulgarhi, recorded her statement on 1.9.2011 and after making the endorsement at 2:30 PM, FIR was registered. The inquest report was prepared. The post mortem of dead body was conducted. After completion of investigation, accused Harish was challaned. However, Balvir Chand, father of accused, Pardeep Sharma, brother of accused, Manjit Kaur, mother of accused and Jyoti alias Aarti, wife of brother of accused Pardeep Sharma, were found innocent on the basis of inquiry conducted by DSP.

In support of its case, prosecution examined as many as 8 witnesses.

When examined under Section 313 Cr.P.C., accused claimed innocence.

After hearing the prosecution, defence and going through the evidence, the learned Additional Sessions Judge, Ferozepur, came to conclusion that it is an unnatural death and accordingly convicted and sentenced the accused as aforesaid.

We have heard the learned counsel for parties and have also carefully gone through the file.

In this case, the prosecution is required to prove that death in

this case is due to demand of dowry. The dowry death defined in Section 304-B IPC is as under :-

'Section 304-B (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.]

Therefore, it has to be proved that it is unnatural death within 7 years of marriage and it is on account of demand of dowry by accused.

Now, when the medical evidence in the form of statement of Dr. Pardeep Kumar Aggarwal (PW2) is examined, it shows that according to him the death is due to asphyxia. The reason of asphyxia is not given. However, it is proved that it is an unnatural death. However, it is not found that death is connected with dowry. In this case, there were two crucial witnesses regarding the demand of dowry. One is Vanita Rani, mother of deceased and second, Jangiri Lal, father of deceased. Vanita Rani, while appearing as PW1, turned hostile and stated that accused never demanded dowry. She even stated that Harish Sharma and her daughter were living happily. No demand was made when child was born, but they gave the gifts of their own. The articles at the time of marriage were also given as gifts and not as demand of dowry. The witness was declared hostile and searching cross examination by the Addl. P.P. failed to extract any favour from the witness.

PW7 Jangiri Lal, father of deceased, also stated that some

dispute has arisen after the marriage between the parties, but later on the same was settled. His daughter had moved an application, in which a compromise was effected and accused had taken Jyoti to her matrimonial house. He stated that her daughter was not harassed by accused. He cannot tell as to what is the cause of death of her daughter. PW7 was also declared hostile by prosecution and in cross examination, he did not mince even a word about harassment and demand of dowry by accused. Therefore, we are of the view that the demand of dowry is not proved. Consequently, it is not proved to be a dowry death, though it is unnatural death. Therefore, the ingredients of Section 304-B IPC are not fulfilled and accused could not be convicted under Section 304-B IPC.

We are of the view that burden is on the prosecution to prove that it is an unnatural death on account of demand of dowry within 7 years of marriage. Since ingredients of said offence are not fulfilled, therefore, accused is granted benefit of doubt. Consequently, CRA-D-886-DB-2012 is allowed. The impugned judgment of conviction and order of sentence dated 30.8.2012, passed by Additional Sessions Judge, Ferozepur, in Case No. 30 of 2011, convicting appellant-Harish Kumar, for offence under Section 304-B IPC, is set aside. He is acquitted of the charges framed against him. He be released forthwith, if not required in any other case. The fine, if any paid, be refunded to him.

(A.B. CHAUDHARI)
JUDGE

(KULDIP SINGH)
JUDGE

23.8.2018
sjks

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