

CRA-S-398-SB-2004 (O&M)
with
CRR-1026-2004 (O&M)

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

CRA-S-398-SB-2004 (O&M)
Date of Decision: 12.09.2018

Gauri Shankar and others ...Appellants

Versus

State of Haryana ...Respondent

with

CRR-1026-2004 (O&M)

Hiren Aggarwal ...Petitioner

Versus

Gauri Shankar and others ...Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Argued by: Mr. A.P.S. Deol, Sr. Advocate with
Mr. Vishal Rattan Lamba, Advocate
for the appellants in appeal and
for respondents no.1 to 4 in revision.

Mr. Arun Kumar, AAG, Haryana.

Mr. Vishal Gupta, Advocate
for the complainant-petitioner.

ANITA CHAUDHRY, J.

This appeal is by the appellants who were convicted in
FIR No. 183 dated 23.05.2000 registered Section 304-B/34 IPC. They
were sentenced to undergo imprisonment for 10 years and pay fine of
Rs.2,000/- each. In default of payment of fine, they were to further
undergo rigorous imprisonment for a year.

The revision has been preferred by the complainant and his plea is that the accused were men of means and they deserved compensation and therefore, the sentence be enhanced and the fine be increased and compensation be awarded to petitioner.

A resume of facts. Swati – sister of Hiren (complainant) was married to Vivek on 28.02.2000 at Ahmedabad. They were engaged in November 1999. Gauri Shankar and Bimla are Vivek's parents. Amit is his younger brother. All of them were living in a house in Sector 7 at Faridabad. A complaint was given to the police upon the death of Swati. It was disclosed at the complaint that on 23.05.2000 Gauri Shankar informed them at 9:00 P.M. that their daughter had died. Two days earlier Gauri Shankar had called the complainant at 12:25 AM and asked him to speak to his sister. Swati spoke to Hiren – elder brother of Swati. The complainant disclosed that Swati was crying and she was unable to speak and they coaxed her to tell what the matter was and she told them that all of them were troubling her and used to beat her and were demanding money saying that they had no business and were asking for money and when he asked her as to who was troubling her then she named Amit, Vivek and the in-laws. The complainant mentioned that he told his daughter that they would visit her in 2 – 3 days. The allegations are that before he could come, all the accused had forced her to end her life.

The complaint was given to the police at 1:00 P.M. on 23.05.2000. Earlier Gauri Shankar had got a DDR entered the previous

night with the police at 11:55 P.M. The version given by him was that their daughter-in-law had gone for the afternoon nap and did not get up for tea. They knocked at the door but the door was bolted from inside and she did not open. Their younger son came in the evening and they forced the door open and found the body hanging. They brought the body down and took her to the doctor where she was declared dead.

Police lodged the FIR and completed the investigation and filed the challan against all the persons named in the FIR. The prosecution examined 13 witnesses, out of which 11 witnesses were the Draftsman, the Photographer, the Investigating Officer and the Medical Officer. The complainant and his son stepped in the witness box as PW-2 and PW-3.

In the statement recorded under Section 313 Cr.P.C., the accused abjured the trial and pleaded that the marriage was simple and it was not a case of dowry demand nor the girl was being harassed and she was not keeping good health and was overweight and they had spent a lot of money on her treatment for weight reduction. It was stated that the couple had gone for their honeymoon and they were to go to Jammu on 27.05.2000 for which tickets had been booked. It was also stated that a sum of Rs.15,000/- had been deposited with VLCC for weight reduction programme. It was also stated that Swati was nominated as a beneficiary in the contributory scheme as well as the insurance policy. It was stated that the girl was hot headed and used to pick quarrels on petty matters and she used to get enraged and

committed suicide in a fit of anger. It was also stated that she was taken to a psychiatrist.

The accused examined a neighbour, private practitioner, a family member and a servant of the house to negate the prosecution story.

The trial Court convicted all the accused under Section 304-B/34 IPC and held that the conviction was not required to be recorded under Section 498-A IPC as the offence was of the same genre and minor in nature. The accused were convicted to the imprisonment mentioned here-in-before.

The submission on behalf of the appellants is that it was the second marriage for both the girl and the boy and was a simple marriage. It was urged that the complainants have indulged in exaggerations and have mentioned some things which were not there in the FIR. It was contended that Hiren in his statement had stated that 15 days after the engagement, they had received a letter from Gauri Shankar inquiring about the health of Swati and he disclosed that they were shocked to receive the letter as the function had been performed in a congenial atmosphere and had referred to the fact that demand of Rs.3 lacs was made in the letter received in first week of January and that he himself had delivered that amount at Faridabad. It was urged that had it been so, this fact would have found a place in the FIR and the letter has been withheld and the witnesses have indulged in exaggerations. Counsel further submitted that the allegations levelled by the family are

that there were parallel lines and the in-laws used to overhear the conversation made by Swati with her parents but the police did not find it. It was urged that allegations were also made that it was not a case of hanging and the girl was murdered as they found no wrinkle in the sari with which the girl had supposedly hanged herself and they did not find the fan to be twisted. It was urged that the girl was overweight and a sum of Rs.15,000/- was deposited for weight reduction programme and all was well and there was no demand. It was urged that the allegations in the FIR are that their daughter had told them that they had no work and business was not running whereas PW-3 had stated that as per his enquiry, the accused had good business and therefore, there is a contradiction. It was contended that Subhash, whom the family had consulted before marriage and had given good report about their business was not examined and was kept away. The counsel further submitted that the complaint was made by the father whereas he had not spoken to his daughter and the phone was handed over to the son and his evidence is mere hear-say. The counsel further submitted that the father had admitted that his daughter was gaining weight. The counsel further submits that had the girl been beaten up then there would have been fresh injuries and the bangles would have broken but one piece of bangle of the size 1.5 c.m. x 5 c.m. was found by the Investigating Officer and it could be that when the body was lowered it could have broken. Counsel further contended that in the statement under Section 313 Cr.P.C. the accused had stated that the couple was to go to Jammu

and the girl had been nominated in the insurance policy and contributory scheme. The counsel had also referred to the statement of DW-2 that the girl was referred to a psychiatrist vide Ex.DC. The counsel contended that since it was the second marriage, therefore, it was a quiet affair and the articles which have been recovered would show that it was not a pompous show and only 35 people had come for the marriage and the financial status of the family was good. Counsel further submits that both the sons were working. It was further contended that since it was the second marriage and the girl was overweight and may be that was playing on her mind and she was sensitive and that was the trigger and she committed suicide and it was not death related to dowry demand and there is no evidence of any cruelty prior to her death. It was also contended that after marriage, the girl had gone to her parent's house which is normal and the husband had brought her back from Ahmedabad and had there been a case of dowry demand, the husband would not have gone to fetch her if the relations were sour. It was contended that it was the father-in-law who reported the matter to the police and the first version was with the police. It was also urged that since the appellants' family was financially sound, there was no reason to make any demand and no evidence could be produced that the girl had been murdered and in the revision filed by the complainant they are accepting the fact that the accused family were financially well off, which contradicts what has been stated in the complaint.

The submission on behalf of the complainant was that the death had taken place within three months of the marriage and the girl had made a call to the family late in the night as the other family members used to hear her conversation on the parallel phone line and she had told them that she was being beaten and there was demand of money and injuries were found in the PMR.

The State counsel contended that the complainant and his son have spoken about the demand and the treatment meted upon the girl and the death was unnatural and within 7 years of the marriage.

The death in this case took place in the matrimonial home within three months of the marriage. For the application of Section 304-B IPC the burden is upon the prosecution to prove the guilt of the accused. It has to be examined whether any cruelty or harassment had been meted upon the deceased just before the unfortunate incident. It would be useful to reproduce Section 304-B IPC.

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)."

From a conjoint reading of Section 304-B of the Indian Penal Code and Section 113-B of the Indian Evidence Act, it will be apparent that a presumption arising thereunder will operate if the prosecution is able to establish the circumstances as set out in Section 304-B of the Indian Penal Code.

The ingredients of the aforementioned provisions are :

(1) That the death of the woman caused by any burns or bodily injury or in some circumstances which is not normal; (2) Such death occurs within 7 years from the date of her marriage (3) That the victim was subjected to cruelty or harassment by her husband or any relative of her husband; (4) Such cruelty or harassment should be for or in connection with demand of dowry; and (5) it is established that such cruelty and harassment was made soon before her death.

In the case of unnatural death of a married woman as in a case of this nature, the husband could be prosecuted under Section 302, Section 304-B and Section 306 of the Indian Penal Code. The distinction as regards commission of an offence under one or the other provisions as mentioned hereinbefore came up for consideration before a Division Bench in **Satvir Singh & Ors. v. State of Punjab and another, [(2001) 8 SCC 633]**, wherein it was held :

"Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is "at any time" after the marriage. The third occasion may appear to be an unending period. But the crucial words are "in connection with the marriage of the said parties". This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For

example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of "dowry".

Hence the dowry mentioned in Section 304-B should be any property or valuable security given or agreed to be given in connection with the marriage. It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304-B is to be invoked. But it should have happened "soon before her death." The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. The legislative object in providing such a radius of time by employing the words "soon before her death" is to emphasise the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a perceptible nexus between her death and the dowry related harassment or cruelty inflicted on her. If the interval elapsed between the infliction of such harassment or cruelty and her death is vide the court would be in a position to gauge that in all probabilities the harassment or cruelty would not have been the immediate cause of her death. It is hence for the court to decide, on the facts and circumstances of each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept "soon before her death".

Coming now to the facts of the case, Swati was married to Vivek in February 2000. The girl was from Ahmedabad. After marriage she was living with her mother-in-law, father-in-law, husband and his younger brother. It was the second marriage for both the boy and the girl. The complainant side did not lead evidence to show that the wedding was lavish or pompous nor spelt out the amount spent on the wedding. They would have ample evidence in the shape of photographs with them but it was not produced. The death came to the notice of the in-laws around 7:00 P.M. as Swati did not open the door of her bedroom. The first information was given to the police by the father-in-law. They also called up the parents informing them of the incident. Gauri Shankar got the DDR entered at 11:55 P.M. The version given there was that their daughter-in-law had gone to take the afternoon nap but did not get up and they knocked on the door to wake her and join them for tea but she did not open the door. Their younger son came around 7:00 P.M. they forced opened the door and found the body hanging. The complainant suspected that it was a case of murder and gave his own account suspecting the version given by the father. His case was that the girl had been beaten and there were injuries on her face and the blades of the fan were not bent and she had been done to death for dowry.

It is necessary now to refer to the statement made by Hiren - the author of the FIR. He is brother of Swati. Hiren had deposed that they had spent Rs.1.5 lacs on the engagement ceremony which was solemnized on 15.11.1999 and the accused had come to Ahmedabad for the function and they had returned in a happy frame of mind but 15 days later he

received a letter from Gauri Shankar inquiring about Swati's health and he also referred to Swati's weight. They further disclosed that they all were shocked to receive the letter as the ceremony had gone well and after consulting the family he rang up Gauri Shankar and told him that at the time of the engagement no such issue was raised. He further deposed that he was asked to send a sum of Rs.3 lacs and he delivered the amount to Gauri Shankar at Faridabad and thereafter the wedding took place. The complainant further disclosed that Swati came to Ahmedabad on 18.03.2000 and stayed with them for 10 – 12 days and remained in a pensive mood and she was weeping and when her mother asked her the reason and as to why she was not wearing new clothes on the festival then she started weeping bitterly and complained that all her jewellery and clothes were in possession of the mother-in-law and she had been married in a greedy family and they were expecting too much and on inquiry she informed that she did not disclose this fact earlier as there was parallel line on two telephone connections and she had also asked her mother not to speak on telephone. The mother further stated that they gave her Rs. 1.5 lacs and she returned to the house of her in-laws on 10.04.2000 and they had been speaking to her on phone. He further disclosed that on 20.05.2000 they received a call from Gauri Shankar at 12:30 at night and passed over the phone to Swati and she was weeping and was unable to talk and on coaxing she told them that she was beaten up and they were demanding dowry and when they asked the name of the person & she named all of them and they told her not worry and they would be coming

in 2 – 3 days, however, on 22.05.2000 they received a call from Gauri Shankar that Swati had died. He stated that they tried to call back again but the phone was coming engaged and it appeared that the receiver had been kept on the side. He stated that then they reached Ahmedabad the next day around noon and found the body lying and there were injuries on the face, hand and on the neck and on inquiry the police told them that she had died of hanging. He stated that the length of the fan was 2½ feet and the body was lying on the floor and her Sari was not crumpled nor the fan blade twisted and they were told by the police that the door had been forced opened but they did not find any sign and Swati had been murdered on account of their greed for dowry.

The complainant did not disclose what was demanded and from whom. The statement is silent. On perusal of the cross-examination, it can be seen that the complainant admitted that he had not visited his sister after her marriage. He admitted that he had not written all the facts in the complaint. He admitted that he had not mentioned in the complaint that they had received a letter from Gauri Shankar inquiring about the Swati's health or that she was fat. He admitted that he had not mentioned in the complaint that they were asked to send Rs.3 lacs before the marriage or that he herself had delivered that amount to Gauri Shankar at Faridabad. He explained that the police officer had asked him to give a brief statement and therefore, all the facts were not introduced. He admitted that he had not disclosed that their sister had visited Ahmedabad and had remained with them for few days or that she was serious and sad and was not well

dressed for the festival. He admitted that he had not mentioned about the parallel telephone lines or that they were cautioned by their sister not to speak on the telephone. He admitted that in the compliant he had not referred to any injuries on her face or neck. He admitted that he had not mentioned that the Sari was not crumpled or about the fan. He stated that they had taken photographs of the engagement ceremony and he had kept the account of the amount given to Gauri Shankar in January 2000, which was lying at his house. He admitted that only 35 – 40 people had come in the function and they had stayed at Rajpat Club. He admitted that Swati was a divorcee and she was previously married to a person in Ahmedabad. He stated that she was divorced after two years of her marriage and the divorce was by mutual consent and this marriage was after four years of the divorce. He could not say that in the matrimonial column of newspaper Vivek had mentioned that they were importing and exporting computers and running a concern by the name of Metro Sales Corporation in Faridabad. He stated that he did not know whether they had substantial income from business. He could not say whether they were paying income tax for the last 10 years. He denied that Swati was overweight or that she had been referred to VLCC. He could not say whether a sum of Rs.15,000/- had been deposited with VLCC for weight reduction.

Kirpa Ram – father of Swati made a similar statement as made by his son. But it is necessary to refer to the few vital admissions made by him in the cross-examination. He had disclosed that he had not given any receipts to the police to show the purchase of dowry articles and in his

record he had mentioned the amount that was paid as the expenses made for the marriage. He stated that a sum of Rs.3 lacs was given in January 2000 but he did not remember the date. He was confronted with Ex.DA where he had disclosed to the police that he had given Rs. 1.5 lac. He admitted that before the alliance was fixed through the matrimonial columns he had made inquiries from his relatives living in Sirsa (Haryana) namely Subhash Goyal who was a witness in this case and as per his report the accused had a good business. He stated that it was on the festival of Gangor that his daughter had disclosed that accused used to beat her and demanded cash. He stated that they did not report to the police that the Jewellery of his daughter had been taken away by the mother-in-law. He stated that he had told Vivek not to torture his daughter and to keep her properly on 10.04.2000. He stated that his son Hiren used to live with him and Hiren usually attend the calls and Hiren had spoken to Swati that night and when he took the receiver the call was disconnected and he tried to call but could not succeed. He admitted that the accused had three telephone connections at their residence. He stated that Vivek had never made any demand in his presence. The witness volunteered that all the four accused used to torture the daughter as per the information received by him. He admitted that his daughter was overweight. He could not say whether family had consulted any doctor or a health centre and that Swati was to join any weight reduction programme.

The prosecution had given up Subhash Goyal, Shorab and Shashi as unnecessary. Anrup and Shekhar Bansal were given up as won

over by the accused. The remaining witnesses were the Medical Officers and the Police Officials.

The Medical Officer had given his opinion that the death was asphyxia due to hanging.

From the above, it can be seen that the marriage had taken place in February 2000. The girl had returned to Ahmedabad and had stayed with her parents for almost two weeks. The husband had gone to bring her back. Neither the brother nor the father had visited her. It is admitted that there were three telephone connections. It is admitted that on 20.05.2000 Gauri Shankar the father-in-law had made a call and the receiver was thereafter handed over to Swati to speak to her family. The allegation levelled by the complainant is that Swati was crying and had complained that she was beaten and they were demanding dowry and on hearing that they had told that they would be coming in 2 – 3 days but two days later, they received information that Swati had died. The father had not spoken to his daughter that night. Even after hearing the complaints and that she had being beaten, none of the family members came to Faridabad. They claim that they were well off and doing well in business and they flew by air after the death of their daughter. Had that been so, they would have immediately attended to the complaint made by their daughter. There are reasons to doubt the statements that she had complained of demand of dowry and beatings as the complainant has withheld the letter written by Gauri Shankar to them prior to the marriage. The allegations are that before marriage also a letter had been written and a

demand was made. There was no reason to withhold that letter and the complainant has tried to conceal vital information from the Court. Not only this, the complainant's family have indulged in exaggerations.

The girl was educated and it was her second marriage and there was a divorce from the earlier marriage and the girl had lived with her parents for 4 – 5 years before the matrimonial alliance was fixed with Vivek. It was a simple marriage as only 35 - 40 people had gone in the Barat. It also appears from the evidence that Swati was overweight and there was some conversation between the two families relating to her weight. The complainant side had referred to the letter and had stated that they were shocked to receive it. There was no reason for them to keep away that letter as it was an important piece of evidence and an adverse inference needs to be drawn against them. The family was well versed with law and the procedures since the earlier marriage failed and a divorce decree was obtained and if there was any complaint that there was any demand and had the girl been beaten up, she would have immediately contacted the friends and the families who were known to the complainant's family and were residing in Haryana. The girl would have got her medical done. The family was not responsive to the call made by their daughter again goes to show that the issue was not relating to any beating or cruelty. It appears that the girl had lot of expectations. It could be that she was not able to adjust or that some unknown fears came to her mind and she was heart broken. The father-in-law in order to help her asked her to speak to her family and it is in that context that the call was made

two days earlier. Had the girl been beaten up, the in-laws would not have allowed her to use the phone or call for help. The complainants have concocted the story of dowry demand and cruelty and there appears to be no nexus between the harassment and death. The independent witnesses who knew the family were given up as unnecessary or being won over by the accused.

The prosecution was required to prove that the deceased was subjected to harassment or cruelty in connection with demand of dowry which has not been proved. There are serious doubts about the case. The subsequent conduct of the complainant also raises a doubt. The family came and stayed in the house of the accused till late afternoon which appears not normal. To attract conviction under Section 304 B of IPC, the prosecution was required to show that soon before death the deceased was subjected to cruelty or harassment and it was also to be shown that there was a proximate and live link between the effects of cruelty based on dowry demand and death. No doubt the period between the marriage and the date of death is less but all seemed normal in the short span and it had nothing to do with the harassment relating to dowry. The girl had returned to her parent's house as is normal after marriage. She stayed with her parents for 10 – 12 days. If the parents had noted something amiss as they say, then they would not have sent her back with the husband who had specially travelled to Ahmedabad to bring her back. No evidence was led by the prosecution to show that there were parallel phone lines or that Swati had been speaking to her family only in the dead night. Nothing prevented her to also speak in private at night. Why would the father-in-law dial and give the phone to the daughter-in-law.

Kirpa Ram had stated that no demand had been made by his son-in-law. He had volunteered that he had received this information against all the four accused. The allegations in the FIR are that a demand of money had been made as the accused had no business. On the contrary, the complainants have admitted that they had made enquiries from their known persons and the business was established and they were earning well, therefore, the allegations made in the complaint are made up.

The girl had committed suicide. It only reflects upon her mental condition. It could be that she was unable to cope up with the second marriage and her expectations were different and she could not return to her parents and therefore, unable to bear the abnormal stress and unable to cope up with the circumstances in which she was placed, she committed suicide. It was not a dowry death, therefore, the judgment of the Court below has to be set aside.

Consequently, the appeal is allowed. The judgment of conviction and sentence is set aside and the accused are acquitted. As a consequence, the revision filed by the complainant fails and is dismissed.

(ANITA CHAUDHRY)
JUDGE

12.09.2018

'Sunil'

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No