

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

**CRA-S-546-SB-2004 (O&M)
Date of Decision: 23.02.2018**

Dinesh Kumar and others

...Appellant(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Paras Talwar, Advocate
for appellants no.1, 3 & 4.

Mr. Rahul Rathore, DAG, Punjab.

ANITA CHAUDHRY, J.

Challenge in this appeal is to the orders of conviction and sentenced, passed by the Additional Sessions Judge, Barnala on 13.02.2004/16.02.2004, vide which the husband, his two brothers and mother were sentenced to undergo rigorous imprisonment for a period of 10 years for commission of offence under Section 304-B alongwith a fine of Rs.5,000/- each. The accused were acquitted under Section 302/34 IPC.

During the pendency of the appeal, appellant no.2— Santosh Rani had died and her appeal had abated.

The facts as projected by the prosecution in nutshell is as follows:-

Meenu d/o Bhajan Lal was married to Dinesh on 03.12.1997.

Meenu was a S. Teacher and was highly qualified. She gave birth to a child on 13.05.2000. Dinesh brought Meenu back from Malerkotla to Barnala on 23.06.2000. The allegations are that at the time of departure, the complainant had given gold ornaments and clothes of about Rs.40,000/-. While leaving, his daughter started weeping and did not want to go to the house of the in-laws and had told her parents that her mother-in-law, husband and Jeth (elder brother of her husband) would kill her or she would die on account of harassment by them. The complainant in his complaint mentioned that he pacified his daughter and told her that daughters look good in their in-law's house. He also stated that his daughter had told him that the in-laws were harassing her for dowry. The complainant got a call at 6:00 AM from a relative of Rekha wife of Naresh(one of the accused) that Meenu had died at night. On receiving this information, they came to Barnala and found the dead body of their daughter in the room. They found no injuries but believed that she had died on account of harassment by the son-in-law, his brothers and mother-in-law on account of dowry. The police after investigation filed the challan only against the husband. Later on the remaining accused were summoned under Section 319 Cr.P.C.

Charge was framed under Section 302/34 IPC and in the alternative under Section 304-B IPC. The accused claimed trial.

The prosecution examined the Medical Officer, the parents of the deceased and the Investigating Officer. Veeru sister of the deceased was given up as unnecessary.

The accused abjured the trial and denied that there was any demand of dowry. It was stated that the allegations of dowry had been introduced to implicate them and on 23.06.2000 Dinesh was on duty from 8:00 AM to 5:00 PM and he was not present at Malerkotla. The other accused Naresh and Rajesh stated that they were residing separately and had a separate kitchen and were working independently. They had also introduced in evidence the memorandum of partition dated 19.11.1999.

By way of defence, the accused had examined 12 witnesses.

The prosecution witnesses had produced a diary maintained by Meenu. The father had admitted her handwriting. The audio recording between the complainant and wife of one of the accused was produced by the defence. It was sent to the forensic science laboratory and positive report had been received. The trial Court rejected this evidence. The trial Court considered the oral statements and it was held that the accused was silent as to how Meenu had died and since they had not sent any intimation to the police or the complainant, they had things to hide and it was a case of demand of a Maruti car. The trial Court held that there was no circumstance to show that the girl had been murdered. The accused were acquitted of the offence punishable under Section 302 IPC but were convicted under Section 304-B IPC.

The learned counsel for the appellants submits that there is no evidence of dowry demand and a perusal of the complaint would show that it only speaks about harassment and it does not mention what was demanded and when it was demanded. The counsel submits that the husband was a Junior Engineer and the deceased was a Teacher in

Government boys school and both the brothers of the husband were in Government service and had separate mess and living quarters. The counsel urges that only the husband was challaned and the rest of them were declared innocent but were summoned under Section 319 Cr.P.C. The counsel referred to the diary and and extensively read the same and urges that a reading of this would show that it does not refer to any demand of dowry and the girl was hyper sensitive and she was expressing her own feelings and also love for her husband and her expectations of life and does refer to the mis-understanding between the two and was seeking blessings from God to pardon her on account of her mistakes. The counsel further submits that after the case was registered, the sister-in-law (Bhabhi) of the deceased had spoken to the complainant and the tape recorder, the recording and the cassette and the transcript was produced and the cassette was sent for verification to the FSL and the FSL report has been received that the voice was that of the complainant and the conversation was between complainant and Surekha but the Court ignored that piece of evidence and there is an admission there that there was no demand by any of the accused. It was urged that the husband had taken a insurance policy and after his marriage he had changed the nomination in favour of his wife and this was proved by DW-10. The counsel submits that at the trial the witnesses have stated that there was demand of a Maruti car and the fact was that the husband had purchased a second hand Maruti car in the beginning of that year. The counsel also refers to the statement made by the witnesses where they have stated that the daughter had disclosed for the first time while she was leaving for her

matrimonial home in June 2000 that she was being harassed for demand of dowry. It was urged that the father has made a contradictory statement as he had stated that the daughter had told him two months before the birth of the child that she was being harassed and humiliated on account of dowry. It was urged that the demand of car had not been proved and there is no evidence that it was a dowry death and the presumption of Section 113-B of the Evidence Act cannot be invoked. The counsel also states that no complaint was made earlier and the complainant is a government employee and his daughter was educated and they have held back the sister who was present when the deceased had disclosed to her parents about the demand. The counsel further submits that the child born from the wedlock is with their family. Reliance was placed upon ***M. Srinivasulu vs State Of Andhra Pradesh 2007(4) RCR Criminal 146.***

On the other hand, the State counsel has supported the impugned judgment. It was urged that the girl had written about her harassment and a reading of it would show that all was not well and she was being harassed and the appellants have spoken about demand of dowry and it is the appellants who knew the actual facts and the accused side did not inform about the incident and they came to know from a relative of their daughter-in-law.

Be that as it may, let us consider the case of the prosecution and the evidence which is projected but before that it is necessary to record the relevant Sections and it is to be examined whether the prosecution has been able to prove all the ingredients beyond reasonable doubt so as to attract the presumption contained in Section 113 B of the Indian Evidence Act.

Section 113 B of the Indian Evidence Act reads as follows:

***“113 B. Presumption as to dowry death:** When the question is whether a person had committed the dowry death of a woman and it is shown that soon 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.”*

The presumption shall be raised only on the proof of the following essentials:

- (i) the question before the Court must be whether the accused had committed the dowry death of a woman;*
- (ii) The woman was subjected to cruelty or harassment by her husband or his relative;*
- (iii) Such cruelty or harassment was for or in connection with, any demand for dowry; and*
- (iv) The woman was subjected to cruelty or harassment soon before her death.*

Section 304-B IPC relates to dowry death and reads as follows:-

***“304 B. 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.”*

The basic essentials required to be established under Section 304B IPC are :

- (i) The death of a woman was caused by any burns or bodily injury or otherwise than under normal circumstances;*
- (ii) Such death have occurred within seven years of her marriage; and*
- (iii) Soon before her death she was subjected to cruelty or harassment by her husband or any relative or her husband.*

The apex Court in *M.Srinivasulu's* case (supra) had referred to the two Sections and had held as under:-

“10. A conjoint reading of [Section 113B](#) of the Evidence Act and [Section 304B](#) IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the 'death occurring otherwise than in normal circumstances'. The expression 'soon before' is very relevant where [Section 113B](#) of the Evidence Act and [Section 304B](#) IPC are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by prosecution. 'Soon before' is a relative term and it would depend upon circumstances of each case and no strait-jacket formula can be laid down as to what would constitute a period soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under [Section 113B](#) of the Evidence Act. The expression 'soon before her death' used in the substantive [Section 304B](#) IPC and [Section 113B](#) of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression 'soon before' is not defined. A reference to expression 'soon after' used in [Section 114](#) (illustration (a)) of the [Evidence Act](#) is relevant. It lays down that a Court may presume that a man who is in the possession of goods soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. The determination of the period which can come within the term 'soon before' is left to be determined by the Courts, depending upon 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 concerned cruelty or harassment and the death in question. There must be existence of a proximate and live-link between the effect of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence.”

On going through the evidence, there are some facts which are not disputed. The marriage took place on 03.12.1997. The girl mostly stayed in the matrimonial home. She was a Teacher in a Government school. No evidence has been led to show that she had not been attending the school or remained at home. There are some writings which are not disputed and are in the hand of the deceased which show her feelings. Some of the lines mentioned in diary when translated, read as under:-

.....I always used to think that whom we love the most is our best friend and we can say/share our every talk with him, whether it is disclosed every good and bad thing to him. I always considered him as a good friend and shared any good and bad thing with him. But he always considered that I was bothering him because now I also feel that I am insane. No person can become friend of anyone. Perhaps, except God, nobody is friend of anyone. But I considered him my God, Allah and everything. Even though I used to quarrel with him but could not tolerate his behavior of ignoring me. But what can one do which has

happened, it has happened. Now my only request to you is to take me to that house, which is only mine. I do not want anything in life. Life has not given me anything except pain and dejection. The person whom I loved so much and worshipped him, he hates me. Then what is the use of this life. I am alive only because that I have to suffer more due to my mistakes. Perhaps, this is fate of people like me. Perhaps when you would take me to your house, they would also become happy. I have not given them anything except sadness/sorrows. Perhaps, my death may give them some solace. Almighty, it is my only prayer that you may call me to you, you would pardon me for my mistakes. Now I cannot tolerate more. I cannot see them more pained and during my life time, they do not want to become happy. Perhaps, it is written in my destiny. I want that I should forget all these things and give only love to them but they do not want to forget anything. My extreme love was my madness, only in that I have committed mistakes. Now I do not want to commit any mistake, silly mistakes. I only pray before you to call me to you.....

.....I could not understand, what is life. I am trying that I should live like other people. But is it possible, perhaps no. Perhaps, I do not have any feeling or emotion. I only want that they/he should live happily, whatever may happen to me. My life has no meaning. When a person whom I loved so much, could not understand me, then what is left in this world. Almighty, I want that you should call me or give me the power to tolerate all this. I do not know for how many days, I would live with them or for how many days, they would keep me and when they would ask me to leave. But I only ask one question from you Almighty as

to what is my fault, what crime I have committed that I am being given such big punishment that I am nothing for them. Perhaps this is luck/destiny.

Hamne to dil se Chhaha tha unko who
hue na humari Hami ke liye koan
berukhi Sab log hein tum ko pyare

Now I have started fearing from life. Do not know what is in destiny to see more in life. But they would not understand. I shall have to change myself. Perhaps it has become my habit to keep thinking at all time.

God give me so much courage that I may tolerate all this. I do not know as to why you have kept me alive. Nobody needs me. I am useless in their life. He does not need a wife, he needs a maid, which I cannot perhaps fulfill. The motive of his life is only himself.

Sometimes, I think as to why a person performs marriage, only for physical satisfaction. There are other meaning of marriage also. I always thought that marriage is meeting of two hearts and not of physical bodies. But now I have started feeling that marriage is not an alliance of meeting of two hearts but name of breaking hearts. Perhaps people perform marriage because it is their compulsion to live in society.....

The above writing are of August 1999. The last writing is in September 1999 and a portion of it reads as under:-

What is life, I could not understand. Nobody is happy. Everybody has some problem. If there is any problem between us, it is of understanding. Perhaps, we both are same. We want that our every wish should be fulfilled. But it is not possible. Therefore, I am trying to finish myself that I should have no

effect of good or bad. I also know that if I would be unhappy, even then they would not be happy. They love me very much but they have their own way. Perhaps they think that if.....

Sometimes I think as to what we have got from life. Even my parents got separated from me. My husband did not get life partner of his choice. But whether one can get that type of life partner in today's life, perhaps not. But if it can happen, it is my prayer that whatever may happen to me, but he should get a wife like a lady which he had imagined. I would be happy that they are happy. Perhaps I do not have love in my luck from a person whom I loved so much. It is my weakness that I always considered that male and female are equal but now I have started feeling that I am wrong. A lady is never equivalent to a man. People may become so much educated and progress in life, whether lady earns equal to husband or does work even more, but after all she is a lady!!

But why does it happen that a lady who is a mother may be of any type is worth worshipping for a man, but a wife always deserves abuses. Though she may do any. Perhaps, it is not in my case only. But it was difficult for me to tolerate all this. But now it has become habit. After coming here, I came to know that only being educated is not necessary, some people can do this despite being educated and some uneducated people can behave good.

I only want that I should have so much courage that I should abide by this every thing and there should not be tears in my eyes at least before him because my pain is only for me. They do not have anything to do with my pains.

Almighty, give me so much courage that I should abide by him at every level and it should not come in my mind whether I have some relation with him or not. Till the time, I am alive, I keep on performing my duty.

A perusal of the above would show that the girl was not happy. She had expectations. She admits that her husband loved her but in his own way but there was no understanding between them. She respected him and did not want the husband to be sad and she had also commented that if she remained sad then it would make her husband sad as well. Some lines are about her expectations as she was educated and made to do house-hold chores. None of the writings refer to any demand by any member of the family.

The defence had produced some greeting cards. Some of them given by the girl to the husband on their marriage anniversary and some sent by another persons. The husband had taken a insurance policy and had changed the nomination in favour of his wife. When the evidence is examined in this background, it has to be seen whether there was any evidence to show that the victim was subjected to cruelty or harassment soon before death.

The writing in the diary are for the period July 1999 to September 1999 i.e. perhaps prior to her pregnancy. It appears that when she conceived the child, she was more at peace. It is, therefore, there was no complaint or writing and nor the parents knew anything. Had they sensed that something was wrong with the relationship, they would not have sent her. The girl was highly educated and she used to pen her thoughts. It was easy for her to leave a note or even call her parents before she took the extreme step in case she was tortured, harassed. She preferred to die in silence. She was unable to clear the mis-understanding with the husband. She was dejected. She had love for her husband and

had spoken about some mistake she had committed. Those thoughts were troubling her. She was unable to contain herself or remain happy.

The emotions which are displayed in her diary penned prior to her death do display that she was touchy and was considering taking her life even then. She was tired of her life because her dreams and expectations from herself and life were not turning out as expected. She believed that life was not worth living. She did not take any step then. The unfortunate incident came nine months later.

The parents were unable to cite a single sentence to prove that their daughter was tortured, harassed on account of dowry. The diary contains four pages. The writing not refer to any incident related to any demand in relation to dowry. She did espouse her feeling which convey that the husband was indifferent to her. It does record that it was a disheartening period and she was dejected but certainly not relating to dowry demand.

A careful reading of the writings of the girl and the statements of the witnesses, it becomes clear that the parents came to know of the alleged demand only when she was leaving the matrimonial home after the birth of the child but that statement is doubtful as if the daughter was crying and she did not want to go back and had shared her fears that she would be killed, no parent would have sent her back.

The girl had left for her matrimonial home on 23.06.2000 and she died in the intervening night on 24/25.06.2000. There was no injury on the body. There were ligature marks on the neck and the death was on account of asphyxia. The girl had committed suicide. There is

absolutely no evidence of cruelty before death. There is no material to show that soon before her death she was subjected to cruelty in connection with dowry. The prosecution had failed to show the extent of proximate live link between the effect of cruelty based on dowry demand and death of the victim.

The trial Court misdirected itself and had fallen in error in appreciating the evidence. The conviction under Section 304-B IPC cannot be maintained. The existence of a proximate and live link between the dowry demand and the death is missing. The appeal is allowed. The judgment and sentence awarded to appellants no.1, 3 & 4 is set aside. All of them are acquitted. The bail bonds stand discharged.

23.02.2018
Sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No