

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Criminal Appeal No.S-3502-SB of 2012 (O & M)

Date of Decision: July 21, 2018

Rakesh Kumar

..... APPELLANT

VERSUS

State of Punjab

..... RESPONDENT

...

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

...

PRESENT: - Mr. Arshdeep Singh, Advocate, for the appellant.

Mr. Davinder Bir Singh, Deputy Advocate General,
Punjab.

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Jaspal Singh, J

Challenge in the instant appeal is to judgment of conviction and order of sentence dated July 30, 2012 passed by the Sessions Judge, Rupnagar, whereby appellant has been convicted under Section 304-B IPC, in case FIR No.61 dated May 14, 2011 registered at Police Station, Nangal and sentenced to undergo RI for 10 years alongwith fine to the tune of ₹ 20,000/-, and in default of payment of fine, to further undergo RI for 3 months.

As per the prosecution story, appellant Rakesh Kumar was married to Seema daughter of Brahmi Devi on December 08, 2010. There was a demand of motor cycle from the side of Rakesh Kumar. He was also alleged to have given beatings on the person of Seema in presence of her

parents and two other persons. On May 14, 2011, a telephone message was received in the house of Brahmi Devi to the effect that Seema has set herself ablaze and she is admitted in BBMB Hospital, Nangal, wherefrom, she was referred to PGI, Chandigarh. When Brahmi Devi and her family were on the way to PGI, Chandigarh, they again received a telephonic message that Seema has died. FIR was registered. Appellant was arrested.

Matter being exclusively tried by the Court of Sessions, it was committed to the Sessions Court vide order dated September 23, 2011. After completion of investigation, challan against the accused was presented in the court. Finding prima facie case, appellant was chargesheeted under Sections 302, 304-B, 498-A IPC, to which, he pleaded not guilty and claimed trial.

Prosecution examined as many as 11 witnesses before closing its evidence. Incriminating circumstances appearing in evidence were put to accused in his statement recorded under Section 313 Cr.P.C. which were denied by him. Appellant took a specific plea that he has not set Seema on fire. Actually, he is illiterate and is working as a labourer but his wife Seema was educated and due to this reason, she used to dislike him. Seema was much close to Prem Kumar (Jija), husband of her sister. She used to like her Jija and hate him. Appellant – accused examined Jarnail Singh, Sarpach of his village as DW-1 in defence evidence.

After hearing learned counsel for the parties and on appraisal of evidence, appellant – accused stood convicted & sentenced as detailed in first paragraph of this judgment vide judgment/order dated July 30, 2012 which has been challenged by him through the instant appeal.

Learned counsel for the appellant has vehemently contended that impugned judgment/order is not in consonance with the legal proposition and settled canons of law. Misreading of facts and evidence has resulted into miscarriage of justice. Prosecution has failed to lead convincing evidence to prove the charge framed against the appellant – accused. It was a simple marriage and no dowry was given at that time. Even after marriage, no demand of dowry or motor-cycle was made by appellant. Appellant – accused has been falsely implicated in the case. As such, impugned judgment/order is liable to be set aside.

Per contra, learned counsel for the State that prosecution has successfully proved its case beyond all reasonable doubts. Guilt of appellant – accused has been established before the trial court and he has been rightly convicted & sentenced. There is no fault with the impugned judgment/order and same is liable to be upheld.

This Court has given an anxious thought to the rival submissions made by learned counsel for the parties and scanned the record available but does not find any legal substance in the submissions made by learned counsel for the appellant.

For proper adjudication of the controversy in this case, it would be appropriate to note the relevant provisions of Section 304-B IPC and Section 113-B of the Evidence Act, 1872 (for short, ‘Act’):-

“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 of dowry, such death shall be called “dowry death” and such husband or relative shall be deemed to have caused her death.

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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 purpose of this section, “dowry death” shall have the same meaning as in section 304-B, Indian Penal Code.”

The ingredients necessary for application of Section 304-B Indian Penal Code are:-

- “(i) that the death of a woman should be by burn or by bodily injury or occurs otherwise than under normal circumstances;
- (ii) within 7 years of marriage;
- (iii) it must be shown that before death the deceased was subjected to cruelty or harassment by her husband or any relative of the husband or in connection of demand of dowry.”

As far as the ingredient of cruelty and harassment is concerned, Brahmi Devi – complainant stepped into witness box as PW-2 who deposed that appellant – accused Rakesh Kumar started maltreating Seema soon-after one month of marriage to bring more dowry and there was a demand of motor-cycle. She also stated that in May 2011, her daughter Seema and Rakesh Kumar accused had come to her in order to attend a marriage in relation, and accused had beaten her daughter Seema in her presence as well as in presence of Sanjay Kumar and Pawan Kumar. To the similar lines, is the testimony of Sanjay Kumar, brother of Seema (since deceased) who was examined as PW-7. The testimonies of aforesaid two witnesses clearly reveal that there was demand of dowry and maltreatment with Seema from the side of appellant – accused. It has been amply established before the trial court that parents of Seema could not fulfil the demands of dowry/motor cycle raised by the appellant – accused, thus Seema was fed up from the same as well as cruelty, due to which, she ended her life by setting herself ablaze.

As far as burn injuries are concerned, PW-3 Dr. Ravinder Singh, Medical Officer, BBMB Hospital, Nangal Township, District Ropar, who conducted post mortem examination on body of deceased Seema opined that cause of death in this case is due to shock, due to superficial and deep about 90% burns, which is ante mortem in nature and sufficient to cause death in ordinary course of nature.

In the case in hand, appellant – accused was married to Seema daughter of Brahmi Devi on December 08, 2010, who died of burn injuries on May 14, 2011 i.e. within 7 years. For raising presumption under Section 113-B of the Act, accused can be convicted only if soon before the

death, accused has demanded dowry or on not fulfilling of the demand, the woman is being harassed or tortured. In ***Satvir Singh & others vs. State of Punjab & another, AIR 2001 Supreme Court 2828 : 2001(4) RCR (Cr.) 355 (SC)***, it has been held as under:-

“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 wide, the Court would be in a position to gauge that in all probabilities the death 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.”

Similar view has been taken in *Sham Lal vs. State of Haryana, AIR 1987 Supreme Court 1873 : 1997(3) RCR (Cr.) 85 (SC)*, which reads as under:-

“It is imperative, for invoking the aforesaid legal presumption, to prove that “soon before her death” she was subjected to such cruelty or harassment. Here, what the prosecution achieved in proving at the most that there was persisting dispute between the two sides regarding the dowry paid or to be paid, both in kind and in cash, and on account of the failure to meet the demand for dowry, Neelam Rani was taken by her parents to their house about one and a half years before her death. Further evidence is that an attempt was made to patch up between the two sides for which a panchayat was held in which it was resolved that she would go back to the nuptial home pursuant to which she was taken by the husband to his house. This happened about ten to fifteen days prior to the occurrence in this case. There is nothing on record to show that she was either treated with cruelty or harassed with the demand for dowry during the period between her having been taken to the parental home and her tragic end.”

As regards plea of appellant – accused to the effect that she was an illiterate and due to this reason, she used to dislike him as well as she liked Prem Kumar (Jija) and didn’t want to live with appellant. There is no evidence on record to prove this plea and there is nothing on record to show

that Seema was educated and her husband was illiterate. There is also nothing on record to establish that Seema adored Prem Kumar.

It is pertinent to mention here that as per the custody certificate placed on record by the State, appellant – accused has since been released after completion of sentence on September 29, 2017.

In the light of aforesaid discussion, this Court does not find any infirmity, illegality or impropriety in impugned judgment & order of sentence dated July 30, 2012 which is hereby upheld. Consequently, instant appeal is dismissed.

July 21, 2018
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No