

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRA-319-DB-2003

Reserved on : 17.11.2018.

Date of decision : 04.12.2018

Mohinder

... Appellant

Versus

State of Haryana

... Respondent

***CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR.JUSTICE HARINDER SINGH SIDHU***

Present: Mr. Tapan Yadav, Advocate
for the appellant.

Mr. Vishal Garg, Addl.A.G. Haryana.

RAJIV SHARMA, J.

This appeal is instituted against the judgment dated 24.02.2003 and order dated 26.02.2003 rendered by learned Additional Sessions Judge (Adhoc) Fast Track Court, Sonapat, in Sessions case no.39 of 2000, whereby the appellant along with one Ram Niwas was charged with and tried for offence under Section 498-A, 304-B, 201 of the Indian Penal Code (in short 'IPC'). He was convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months more for offence under Section 304-B IPC. He was also convicted and sentenced to undergo rigorous imprisonment for a period of 3 years and to pay a fine of Rs.1000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month more for

offence under Section 498-A IPC. He was also convicted and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.2000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months for offence under Section 201 IPC. Co-accused Ram Niwas was acquitted.

2. The case of the prosecution in a nutshell is that written complaint was lodged by Prem Chand before the SHO, Police Station Sadar Gohana on 21.08.2000. According to the averments made in the application, he was resident of village Shyamgarh. He was labourer. He had solemnized the marriage of his daughter Rekha on 18.11.1997 with the appellant Mohinder. Rekha went to the house of her husband. When she came back, she told them that all the family members of her husband were demanding dowry. He had given sufficient dowry to his daughter. However the appellant kept on demanding dowry. He took loan from various persons and used to pay this amount to husband of her daughter. His wife Roshni (PW-5) and his brother Suresh also accompanied him to the house of his daughter at that time. A panchayat was also held. Mohinder had promised to mend his ways. He received information on 18.08.2000 that his daughter was ill. He went to the matrimonial house of his daughter on 19.08.2000. The dead body of his daughter had been taken to cremation ground by Hukami, Satyawan, Balwan, Naresh, Manju sons of Hukmi, Hari Om, Mohinder, Ram Niwas and Krishan. He found that dead body of his daughter Rekha was lying on the pyre. When he uncovered the dead body, he saw marks of injuries on the dead body. Her hair were dishevelled. Her clothes were torn. He told them that he will not allow them to cremate the dead body without conducting post-mortem examination. He was resisted by the family

members of appellant. He was also beaten up. Kerosene was poured on the dead body and the body was put on fire. He became unconscious. The FIR was registered. Ashes and bones were recovered from the cremation ground by the police. These were sent for FSL examination. The investigation was completed and the challan was put up after completing all the codal formalities.

3. The prosecution has examined a number of witnesses. Statements of accused were also recorded under Section 313 Cr.P.C. According to them, they were falsely implicated.

4. Learned counsel appearing on behalf of the appellant has vehemently argued that the prosecution has failed to prove the case against the appellants.

5. Learned counsel appearing on behalf of the State has supported the prosecution case.

6. We have heard learned counsel for the parties and have gone through the judgment and record very carefully.

7. PW-1 Dr.Dharam Chand deposed that on 18.08.2000, one Mohinder brought his wife Rekha in the hospital. It was case of suspected poisoning. He did not give any treatment and advised Mohinder to take his wife to government hospital.

8. PW-2 Prem Singh is father of the deceased. According to him, he performed the marriage of his daughter with Mohinder. Mohinder used to pick up the quarrel with her. Within one year of marriage, he paid Rs.5000/- twice. He also paid Rs.10,000/- to Mohinder. Mohinder wanted to open a clinic. Panchayat was convened thrice. He used to persuade the appellant to live in congenial atmosphere with Rekha. He arranged money from Dharam

Pal, Babu Ram and Krishan. The gifts were also given to his daughter. Accused was demanding scooter. On receiving information, he went to Rekha's house. He found that the dead body of his daughter was lying on the pyre. He noticed certain injuries on her face. Her clothes were torn. He requested the accused not to lit the pyre as he wanted to call the police. However, the accused party lit her pyre with the help of kerosene. He moved application Ex.PA. He denied that he had given the consent for cremation of Rekha.

9. PW-5 Roshni is mother of the deceased. She has corroborated the statement of PW-2 Prem Singh. According to her, the appellant used to demand money. Her husband used to borrow money.

10. PW-6 Rama deposed that about 18 months back, police came to his village. Police had lifted the bones and ashes from cremation ground. He testified in cross-examination that cremation took place with the consent and in the presence of parents of deceased Rekha.

11. PW-7 Babu Ram and PW-8 Dharampal have not supported the case of the prosecution. They were declared hostile.

12. PW-9 Ajit Singh has testified that he was posted as SI/SHO in Police Station Sadar Gohana. Prem Chand lodged the report. He summoned 9/10 respectable persons of village Bali Brahmanan. He went to the cremation ground. He prepared the site plan. On 22.08.2000 Prem Chand and his wife came to the police station with Dharampal, Krishan, Babu Ram and Dharambir. In his cross-examination he deposed that Prem Chand and Dharambir witnesses told him that when they reached cremation ground, they raised objection against cremating dead body of Rekha. Dharambir was beaten up by the accused and despite protest by Prem Chand and

Dharambir, kerosene was poured on the dead body of Rekha and the dead body was burnt. He denied suggestion that Prem Chand and Dharambir had given consent for cremation of dead body of Rekha.

13. PW-10 Krishan Kumar deposed that he knew Prem Chand son of Surja Ram. Rekha daughter of Prem Chand was married with Mohinder. He never went to the house of accused Mohinder. He was declared hostile and cross-examined by the Public Prosecutor.

14. According to PW-1 Dr.Dharam Chand, the appellant had brought his wife to the hospital. According to PW-1 it was suspected case of poisoning. He referred the patient to the government hospital.

15. PW-2 Prem Singh and PW-5 Roshni have categorically deposed that the appellant used to demand dowry immediately preceding their daughter's death. PW-2 Prem Singh was poor person but despite that he arranged money and it was paid to the appellant from time to time. Panchayat was also convened. He had requested the appellant family not to lit the pyre before the post-mortem examination. His request was turned down. The appellant's family poured kerosene oil on the dead body and it was burnt. He had also noticed the injuries on the dead body of his daughter. There is some delay in lodging the FIR. He has lost his daughter in tragic circumstances. His daughter was blessed with baby boy. Thus the father-in-law would not falsely implicate his son-in-law. The case of the prosecution has not been supported by PW-7 Babu Ram, PW-8 Dharam Pal as well as PW-10 Krishan Kumar. However, PW-9 Ajit Singh has deposed that Dharambir and Prem Chand had told that they had raised objections against cremating the dead body of Rekha. Dharambir was beaten up by the accused and the dead body was burnt by pouring kerosene. The prosecution

has proved the case of dowry death. The deceased had died within 7 years of marriage. The deceased was treated with cruelty and harassed by the appellant for bringing insufficient dowry immediately preceding her death. The appellant had also tried to destroy the evidence by cremating his wife hurriedly without post-mortem examination. PW-1 has deposed that it was case of suspected poisoning. There is no cross-examination on this aspect.

16. In the instant case, there is presumption of dowry death under Section 113 of the Evidence Act. Their Lordships of the Supreme Court in ***Smt. Shanti vs. State of Haryana, 1991 SCC(Cr), 191***, have held that when the dead body is hurriedly cremated and the parents are not informed about death, there is presumption of dowry death under Section 113 of the Evidence Act. Their Lordships have held as under:-

“4. Section 304B I.P.C. reads as follows:

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 purposes of this sub-section, 'dowry' shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 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.

This section was inserted by the Dowry Prohibition (Amendment) Act, 1986 with a view to combat the increasing menace of dowry deaths. It lays down that 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 the death of the woman she was subjected to cruelty or harassment by her husband or his relations for or in connection with any demand for dowry, such death shall be called 'dowry death' and the husband or relatives shall be deemed to have caused her death and shall be punishable with imprisonment for a minimum of seven years but which may extend to life imprisonment. As per the explanation to the section, the 'dowry' for the purposes of this section shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 which defines 'dowry' as follows:

2. Definition of 'dowry' - In this Act, 'dowry' means any property or valuable security given or agreed to be given either directly or indirectly -

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or

any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Keeping in view the object, a new Section 113-B was introduced in the Evidence Act to raise a presumption as to dowry death. It reads as under:

113B. 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 304B of the Indian Penal Code.

One another provision which is relevant in this context in Section 498A I.P.C. which reads as under:

498-A, Husband or relative of husband of a woman subjecting her to cruelty.- Whoever being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation - For the purposes of this section, 'cruelty' means-

a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

A careful analysis of Section 304B shows that this section has the following essentials:

- (1) The death of a woman should be caused by burns of bodily injury or otherwise than under normal circumstances;*
- (2) Such death should have occurred within seven years of her marriage;*
- (3) She must have been 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 for dowry.*

Section 113B of the Evidence Act lays down that if soon before the death such woman has been subjected to cruelty or harassment for or in connection with any demand for dowry, then the Court shall presume that such person has committed the dowry death. The meaning of 'cruelty' for the purposes of these sections has to be gathered from the language as found in Section 498A and as per that section 'cruelty' means 'any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life etc. or harassment to coerce her or any other person related to her to meet any unlawful demand for any property or

valuable security or is on account of failure by her or any person related to her to meet such demand.' As per the definition of 'dowry' any property or valuable security given or agreed to be given either at or before or any time after the marriage, comes within the meaning of 'dowry'. With this background of the provisions of law we shall examine the facts in the instant case."

17. Learned counsel appearing on behalf of the appellant has vehemently argued that taking into consideration the young age of the appellant and that he has to look after the boy, a lenient view may be taken and the sentence may be reduced.

18. There is sufficient merit in his submission. The appeal is partly allowed. The rigorous imprisonment for life is altered to 10 years rigorous imprisonment for offence under Section 304-B of the IPC. The sentences on other counts are upheld. The judgment is modified to the extent ordered hereinabove. The appellant is on bail as his sentence was suspended during the pendency of appeal on July 27, 2006. The appellant is ordered to be taken into custody to undergo the remaining sentence. His bail bonds and surety bonds are cancelled.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

December 04, 2018.

Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No