

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

1. CRA-S No.2136-SB of 2003

Jasbir Singh

... Appellant

Versus

State of Punjab

... Respondent

2. CRR No.688 of 2004

Mansa Ram

... Petitioner

Versus

Gian Kaur & others

... Respondents

Date of decision: 9th July, 2019

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Jasraj Singh, Advocate
for the appellant in CRA-S No.2136-SB of 2003;
for the respondents in CRR No.688 of 2004.

Mr. Gurveer Sidhu, Advocate as Amicus Curiae
for the petitioner in CRR No.688 of 2004.

Mr. Harbir Sandhu, Assistant Advocate General, Punjab
for the respondent/State in CRA-S No.2136-SB of 2003.

FATEH DEEP SINGH, J.

The above detailed two matters have come about on account of judgment and order dated 10.11.2003 passed by the Court of learned Additional Sessions Judge (Adhoc), Hoshiarpur in a case got registered by way of FIR No.76 dated 20.08.2002 under Section 304-B IPC pertaining to Police Station Hariana, District Hoshiarpur (Punjab) by Mansa Ram father of deceased Nirmal Kaur. Through the impugned findings, the learned trial Court while trying accused Gian Kaur, her

husband Chanan Singh and son Jasbir Singh (husband of the deceased), acquitted the parents but convicted the husband Jasbir Singh for commission of offence under Section 304-B IPC and sentenced him to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1000/- and in default of payment of fine to further undergo rigorous imprisonment for one month. It is against these findings, convict husband Jasbir Singh has come up in appeal whereas the complainant father of the deceased had sought setting aside of the order of acquittal of two accused by way of revision. In the light of the matters having emancipated from the same very findings, are being taken up and decided together.

On 20.08.2002 PW4 Mansa Ram complainant met PW6 SI Balbir Singh and made a statement Ex.PE. In the complaint, the complainant alleged that his daughter (now deceased) Nirmal Kaur wife of Jasbir Singh was married to the latter about three years prior to the present occurrence which took place on 20.08.2002, wherein the complainant had given sufficient dowry as per his financial capacity. However, after one year of the marriage, it is alleged that the accused husband and in-laws started harassing and taunting the deceased for bringing insufficient dowry and about one-and-a-half years prior to this occurrence Nirmal Kaur was left by her husband at the house of her parents demanding Rs.20,000/- to enable him to open a shop. The deceased remained with her parents for almost one month and thereafter she was rehabilitated. It was on 20.08.2002, the complainant received a telephonic message that Nirmal Kaur was seriously ill and was taken to

hospital of Dr.Hans Raj at Bullowal and when he rushed to that hospital he discovered that Nirmal Kaur has sustained extensive burns and has been referred to the hospital at Hoshiarpur, where she died the same very day. After making his endorsement Ex.PE/1, ruqa was sent leading to registration of the FIR Ex.PE/2. Thereafter, the investigating officer prepared the inquest report Ex.PC after examining the dead-body and upon moving application Ex.PB for post-mortem examination and endorsement by SMO Ex.PB/1, the same was got conducted through PW1 Dr. Rimpi on the dead-body by way of Ex.PA with pictorial diagram Ex.PA/1. The investigating officer prepared rough sight plan Ex.PG and took into police possession a Can of kerosene Ex.P1, two match boxes Ex.P2 and Ex.P3, bed-sheet Ex.P4, hand-fan Ex.P5 and partially burnt lady suit Ex.P6 by way of memo Ex.PH. During the course of investigations, the investigating officer took into police possession marriage invitation card Ex.P7 through memo Ex.PJ. Draftsman Arjan Khanna PW2 prepared the scaled sight plan of the place of occurrence Ex.PD. The investigating officer SI Balbir Singh PW6 also took into police possession memo Ex.PF on the basis of which SI Ravinder Singh has taken into police possession dowry articles of the deceased.

Upon completion of investigation and presentation of challan, charges were framed against the accused to which they denied and the prosecution examined the above detailed witnesses and on closure of the same, accused were called upon to enter their defence, who denied their allegations taking pleas of total innocence. The accused husband has

taken plea that while he was tilling his land and the deceased was cooking food, her clothes caught fire and she was rushed to the hospital and denied the allegations of the prosecution. The accused in their defence did not examine any witness. Consequent thereupon, present findings were returned.

Going through the arguments of Mr.Jasraj Singh, learned counsel representing the accused; Mr. Gurveer Sidhu, Advocate appointed as Amicus Curiae to represent the complainant and Mr. Harbir Sandhu, Assistant Advocate General, Punjab on behalf of the State. The own stand of the defence admitting that the marriage between deceased Nirmal Kaur and appellant Jasbir Singh took place about three years prior to this occurrence which took place on 20.08.2002. As has been contended by the learned State counsel and conceded by the learned counsel for the appellant that deceased Nirmal Kaur died on account of 99 percent burn injuries and which is well established from the post-mortem report Ex.PA which was conducted on police application Ex.PB after endorsement of SMO Ex.PB/1. This fact is further corroborated from the testimony of PW3 Dr. Hem Raj, RMP at Bullowal to whose clinic the deceased was initially taken and who had referred her to hospital at Hoshiarpur. Thus, it is not in any manner put to question that the deceased died an unnatural death within three years of marriage.

The evidence that has come about is the statement of father Mansa Ram PW4 who has reiterated his allegations made in his initial statement Ex.PE before the investigating officer SI Balbir Singh PW6. It

is categorically mentioned and alleged by the complainant that for about one year, the accused kept his daughter nicely and thereafter, the accused started taunting her for bringing insufficient dowry and which was confided in the father by his daughter when she visited them and in spite of his intervention, the accused did not desist from doing so and continued to harass her for about one-and-a-half years. As is there and remains unrebutted in the light of arguments of learned State counsel, which could not be controverted by learned counsel for the appellant that one month prior to this occurrence Nirmal Kaur had come to her parental house along with the appellant Jasbir Singh and told that the accused were harassing her and demanding Rs.20,000/- from her for opening a shop and that the complainant had made a promise that he will arrange the money in installments and thereafter, the accused took the deceased back home and on 20.08.2002 this unfortunate news had come as to the death of the deceased.

To the specific query of the Court, learned counsel for the appellant could not pinpoint anything adverse that has come in the cross-examination of PW4 Mansa Ram complainant which could be of any help to the defence. Rather, as has been argued, the deposition of PW5 Bakshish Ram brother of the deceased materially corroborates the deposition of the complainant, father Mansa Ram PW4. It is there in the stand of the accused Jasbir Singh in his statement under Section 313 Cr.P.C. that his wife had caught fire while she was cooking and was

rushed to Bullowal hospital and thereafter while being taken to Civil Hospital, Hoshiapur she died on the way.

From this all, what is there in the evidence the accused side in their defence admits the occurrence and the only rallying point as has been sought to be raised with much force and vehemence by learned counsel for the appellant is that mere demand of Rs.20,000/- does not fall within the terminology of dowry and has sought to place reliance on **‘Kans Raj vs. State of Punjab & others’ 2000(2) RCR(Criminal) 695; ‘Hari Singh vs. State of Punjab’ 2002(3) RCR(Criminal) 541; and ‘Appasaheb & another vs. State of Maharashtra’ 2007(1) RCR(Criminal) 747**, arguing further that neither Section 113-B of the Evidence Act nor Section 304-B IPC stand attracted by any means.

Appreciating the submissions of the two sides, Section 304-B IPC is reproduced as below to lay emphasis:

“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.

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.”

It needs to be stressed here that Section 304-B IPC has been inserted in the Indian Penal Code by virtue of Dowry Prohibition (Amendment) Act, 1986 with a view to combat the increasing menace of dowry deaths and therefore, being with a specific object, the Court has a statutory compulsion to presume that the accused has committed dowry death merely on the establishment of two factual positions namely, (1) death of wife having occurred other than the normal circumstances within seven years of her marriage and (2) that soon before her death she should have been subjected to cruelty or harassment by the husband in connection with any demand of dowry; and therefore, by all means once these two necessary ingredients are established, the onus shifts upon the husband to establish it otherwise. The claim as to ‘soon before her death’ laid down in these provisions is with the object to bring proximity to these allegations and in which no definite period can be laid down. Reverting back to the instant case, the depositions of PW4 and PW5 clearly elaborate that it was immediate prior to this occurrence the deceased Nirmal Kaur was harassed and humiliated on account of demand of dowry. Furthermore, Section 113-B of the Indian Evidence Act, 1872 provides by way of presumption and is reproduced below to lay emphasis:-

“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.”

The evidence of father and the son clearly shows that it was immediate prior to this occurrence, there has been demand of dowry and harassment on account of the same. Furthermore, the claim that is sought to be raised that this demand of Rs.20,000/- does not fall within the definition of ‘dowry’, certainly does not impress the Court and the ratios relied upon on behalf of the appellant do not advance the case of the appellant in view of the subsequent view of Hon’ble the Supreme Court laid down in **‘Ashok Kumar vs. State of Haryana’ 2010 AIR (SC) 2839**, wherein their Lordships have observed as under:-

“13. The Courts have also taken the view that where the husband had demanded a specific sum from his father-in-law and upon not being given, harassed and tortured the wife and after some days she died, such cases would clearly fall within the definition of ‘dowry’ under the Act. Section 4 of the Act is the penal Section and demanding a ‘dowry’, as defined under Section 2 of the Act, is punishable under this section. As already noticed, we need not deliberate on this aspect, as the accused before us has neither been charged nor punished for that offence. We have examined the provisions of Section 2 of the Act in a very limited sphere to deal with the contentions raised in regard to the

applicability of the provisions of Section 304-B of the Code.”

Furthermore, their Lordships have also examined the reasonable time which is the best criteria to be applied in appreciation and examination of evidence in such cases of dowry death and where their Lordships have observed as follows:-

*“15. We are of the considered view that the concept of reasonable time is the best criteria to be applied for appreciation and examination of such cases. This Court in the case of **Tarsem Singh v. State of Punjab, 2009(1) R.C.R.(Criminal) 573: 2009 (1) R.A.J. 268**, held that the legislative object in providing such a radius of time by employing the words ‘soon before her death’ is to emphasize the idea that her death should, in all probabilities, has been the aftermath of such cruelty or harassment. In other words, there should be a reasonable, if not direct, nexus between her death and the dowry related cruelty or harassment inflicted on her. Similar view was expressed by this Court in the case of **Yashoda v. State of Madhya Pradesh 2004 (1) RCR(Criminal) 850: 2004(2) Apex Criminal 424 : (2004) 3 SCC 98**, where this Court stated that determination of the period would depend on the facts and circumstances of a given case. However, the expression would normally imply that there has to be reasonable time gap between the cruelty inflicted and the death in question. If this is so, the legislature in its wisdom would have specified any period which would attract the provisions of this Section. However, there must be existence of proximate link between the acts of cruelty along with the*

demand of dowry and the death of the victim. For want of any specific period, the concept of reasonable period would be applicable. Thus, the cruelty, harassment and demand of dowry should not be so ancient whereafter, the couple and the family members have lived happily and that it would result in abuse of the said protection. Such demand or harassment may not strictly and squarely fall within the scope of these provisions unless definite evidence was led to show to the contrary. These matters, of course, will have to be examined on the facts and circumstances of a given case.”

More so, in the present case the accused appellant Jasbir Singh does not dispute that he was nearby when the occurrence has taken place within the matrimonial home of the deceased and thus, being the husband who had immediately rushed the deceased to hospital and therefore, being a fact established within his knowledge, the burden certainly rests upon him to prove it otherwise in view of the provisions of Section 106 of the Evidence Act. Rather the defence has not led any evidence to rebut the stand of the prosecution.

The claim of learned counsel for the revisionist that co-accused Gian Kaur mother-in-law and Chanan Singh father-in-law have been wrongly acquitted, cannot be established so by the learned counsel for the revisionist as nothing concrete could be pointed out in this direction. There is no tangible evidence or allegation that has come about which could be legitimately termed as a legal piece of evidence that these

accused had any role to play in the commission of offence. The Court below has rightly drawn the conclusion as to their innocence.

In the light of foregoing discussions, this Court does not come across any illegality and infirmity in the findings recorded by the Court below and thus, the same need to be upheld. Resultantly, the present appeal as well as the revision petition stand dismissed in those terms.

(FATEH DEEP SINGH)
JUDGE

July 9, 2019

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No