

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

CRA-S No.655-SB of 2004 (O&M)

Date of decision: 16th September, 2019

Dev Kumar & another

... Appellants

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Ms. Rimjhim Mahajan, Advocate for
Mr. Sudhir Sharma, Advocate for the appellants.

Mr. Harbir Sandhu, Assistant Advocate General, Punjab
for the respondent/State.

FATEH DEEP SINGH, J.

Initially in case got registered by way of FIR No.101 dated 13.04.2001 under Sections 304-B & 498-A IPC at Police Station Division No.3/8, Jalandhar, three accused namely Dev Kumar being father-in-law (since deceased), Gopal Rai being husband (since declared as proclaimed offender) and the lone appellant before this Court Maya Devi alias Janak Dulari being mother-in-law of deceased Seema were put up for trial. The Court of learned Sessions Judge, Jalandhar through impugned findings dated 19.02.2004/20.02.2004 convicted the in-laws Dev Kumar and Maya Devi alias Janak Dulari for commission of offences under Sections 304-B & 498-A IPC and sentenced them to undergo rigorous imprisonment for a period of eight years under Section 304-B IPC as well

as to undergo rigorous imprisonment for one year and to pay a fine of ₹1,000/- and in default of payment of fine to further undergo rigorous imprisonment for one month under Section 498-A IPC.

Both the convicts challenged the findings of learned trial Court through instant appeal which stands abated in respect of appellant convict Dev Kumar and thus, leaves only Maya Devi alias Janak Dulari before this Court as the lone appellant.

The allegations in brief that need to be recapitulated are that a marriage between Seema (deceased) and accused Gopal Rai (now proclaimed offender) was solemnized on 16.01.2001. It is alleged by the prosecution that consequent upon this marriage, the accused started harassing, humiliating and taunting the deceased for bringing less dowry and raised demand of more articles. The deceased brought the matter to the knowledge of her parents including the demand of accused of ₹70,000/- for purchasing tickets for the husband to enable him to migrate to Australia. It is thereafter, the father of the deceased Kanwar Sukh Lal, the present complainant along with the deceased went to the house of the accused and handed over the money to the three accused in the presence of son of the complainant namely Rajesh Kumar. Thereafter, it is stated that the husband Gopal Rai went to Australia on 21.03.2001 and thereafter again a demand of ₹50,000/- was raised by the accused from the deceased to enable them to send her to Australia following the

departure of her husband. It is on account of this continuous harassment and cruelty by the acts of the accused, faced with the ignominy, the deceased is alleged to have consumed poison on 13.04.2001 leading to her death the same very day. That is how the prosecution against the accused got initiated into this ugly dowry death episode. It is during the course of investigations, the letter purported to have been written by the deceased immediate prior to her death to her husband was recovered which is Ex.PL with its envelope of post Ex.PL/1 in which names of the all these accused too have figured.

Upon completion of investigations and presentation of challan, both these appellants were put to trial after their son was declared as proclaimed offender. At the trial, prosecution examined PW-1 Constable Jatinder Pal Singh; PW-2 Dr.Dalwinder Singh Toor, Senior Medical Officer; PW-3 Constable Tarsem Lal; PW-4 complainant Kanwar Sukh Lal; PW-5 Rajesh Kumar; PW-6 Sunita Rani; PW-7 Pawan Kumar; PW-8 SI Prem Kumar; PW-9 Jaswant Singh and PW-10 photographer Shammi Atry.

The accused denied the allegations taking up the plea simplicitor that the deceased had died a sudden death which was a natural one and refuted the allegations of the complainant side. It is thereafter, ultimately the impugned findings were returned by the trial Court.

Appreciating the arguments of Ms. Rimjhim Mahajan, Advocate appearing on behalf of Mr. Sudhir Sharma, Advocate for the appellants; Mr. Harbir Sandhu, Assistant Advocate General, Punjab representing the respondent/State and going through the records. As is there in the testimonies of the material witnesses namely PW-4 Kanwar Sukh Lal complainant-cum-father of the deceased, PW-5 Rajesh Kumar and PW-7 Pawan Kumar, both brothers of the deceased, and PW-6 Sunita Rani elder sister of the deceased and the deposition of PW-10 Shammi Atry, photographer who has proved photographs of the marriage Ex.PR, which irrefutably leads to the factum of marriage between the deceased Seema, who then was aged 25 years, with Gopal Rai and which fact even otherwise is not in any manner refuted on behalf of the appellants.

The most hotly debated issue is the cause of death of the deceased, as it is vehemently submitted by the appellants' counsel that there is no semblance of evidence that the deceased died an unnatural death and was a case of poisoning, and has drawn the attention of the Court to the report of Chemical Examiner. The same has been stoutly opposed and controverted by the learned State counsel submitting that the accused had managed to connive with the Chemical Examiner and therefore had set up a contrivance to undo the case of the prosecution. It is submitted that the findings of the inquiry so held against the Chemical Examiner proved by PW-9 Jaswant Singh Sr. Assistant from the office of

Secretary Health, Govt. of Punjab and the deposition of PW-2 Dr. Dalwinder Singh Toor who conducted the post-mortem examination has categorically stated the cause of death to be suspected case of poisoning.

Going through the submissions, as is there on the records this Court is terribly pained at the manner in which the case of the prosecution is sought to be scuttled by such a gross misconduct on the part of the Chemical Examiner and which has been too commented upon in the inquiry conducted by the department when it is well highlighted in the admission record of the deceased Ex.PK that it was death on account of poisoning and has been well clarified in the deposition of PW-2 Dr.Dalwinder Singh Toor corroborated by his writings at two different places on Ex.PK and Ex.PA. While testifying in the Court, PW-2 has further clarified that due to deceptive act of the Chemical Examiner on police request Ex.PG he has opined on the basis of his opinion Ex.PG/1 that the cause of death in this case by poisoning cannot be ruled out, and this witness has also testified against the Chemical Examiner in the departmental inquiry so initiated against him and the latter was suspended on account of his misconduct. The defence has not given any explanation or led evidence to clarify their stand that the deceased died a natural death and nothing has come on the records to rebut this evidence. Furthermore, the last letter written by the deceased Seema to her husband Ex.PL whose envelope is Ex.PL/1 and was got recovered on 14.04.2001

by the investigating officer, on its clear perusal leaves no scope to doubt that the deceased on account of act and conduct of the accused through their illegitimate and illegal demands, was compelled to take this unfortunate drastic step.

Section 304-B IPC deals with dowry death and creates a penal provision where a death occurs other than the normal circumstances within seven years of marriage and it is there that soon before the death she was subjected to demand of dowry. The marriage, in the present case, has been solemnized on 16.01.2001 and the demand has been raised immediately when in the month of March 2001 prior to the husband leaving for Australia, a sum of ₹70,000/- was paid in cash and subsequently on 08.04.2001 a sum of ₹50,000/- was paid to enable the deceased to leave for Australia on the asking of the accused, and she has been forced to commit suicide on 13.04.2001 thus, within a very short span of this marriage as well as demand. The requirement of abetment of a thing as provided under Section 107 IPC ensures that to prove a charge of abetment, the prosecution is required to prove that the abettor had instigated of doing of a particular thing or had engaged with one or more other persons in any conspiracy for doing that thing, or had intentionally aided, by an act or illegal omission, doing of that thing. As is there confided by the deceased in her parents, proved through the testimonies of the father and the brothers as well as sister of the deceased, the

unrebutted documentary evidence of letter Ex.PL which is in the handwriting of the deceased and could not be displaced either in the evidence or in the submissions of learned counsel for the appellants, in the totality shows that it was on the act and conduct as well as omissions of the accused, had led the deceased to consume poison and thus commit suicide.

Section 113-B of the Evidence Act provides for presumption when between the alleged harassment, cruelty and the death in question, there is not much time difference, which is so in the present case easily impels this Court to hold that this demand of dowry, harassment and cruelty was soon before the death and Section 113-B of the Evidence Act shifts the onus upon the accused and makes the Court to presume so.

The defence has miserably failed to give any explanation for this. The faint argument that is sought to be put forth by the learned counsel for the appellants that the husband was in Australia and the death has occurred in India at the parental house of the deceased, does not mean or can be construed to be in any manner beneficial for the defence to rake up their plea of innocence. A young bride, within less than three months of her marriage has been sacrificed on the altar of greediness for dowry. Thus, the contention that no offence under Section 304-B IPC is made out and at the most only offence under Section 306 IPC crystallizes, does not convince the Court much. The learned trial Court has detailed at

length the entire oral as well as documentary evidence including that of official witnesses PW-3 Constable Tarsem Lal, PW-1 Constable Jatinder Pal Singh and PW-8 SI Prem Kumar, the investigating officer of this case, and has given a well reasoned finding and which could not be in any manner put to doubt by lengthy arguments that have been advanced by learned counsel for the appellants. This Court does not feel inclined to accept the submissions of the appellant side and the impugned findings certainly are correct appreciation of evidence and the law, and thus need to be upheld. The appeal being hopelessly without any merit, stands dismissed.

(FATEH DEEP SINGH)
JUDGE

September 16, 2019

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No