

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

- (1) CRA-D-668-DBA-2003 (O&M)
- State of Punjab
- ...Appellant(s)
- Versus
- Raj Kumar and another
- ...Respondent(s)
- (2) CRA-S-172-SB-2003 (O&M)
- Raj Kumar and another
- ...Appellant(s)
- Versus
- State of Punjab
- ...Respondent(s)
- (3) CRR-2094-2003 (O&M)
- Vinod Kumar
- ...Petitioner(s)
- Versus
- Raj Kumar and others
- ...Respondent(s)

Date of decision: 21.11.2019

**CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN
HON'BLE MR.JUSTICE H.S. MADAAN**

Present: Mr. Bhupender Beniwal, AAG, Punjab for the appellant(s)
in CRA-D-668-DBA-2003 and for the respondent
in CRA-S-172-SB-2003 and for respondent No.3
in CRR-2094-2003.

Mr. P.S. Hundal, Sr. Advocate with
Mr. Premjit Singh Hundal, Advocate for the appellant(s)
in CRA-S-172-SB-2003; for respondents in
CRA-D-668-DBA-2003 and for respondents No. 1 & 2
in CRR-2094-2003.

Mr. H.S. Randhawa, Amicus Curiae for the petitioner(s)
in CRR-2094-2003 and for the complainant/victim
in CRA-S-172-SB-2003.

H.S. MADAAN, J.

In nutshell, the facts of the case as per prosecution story are that criminal machinery in this case was set into motion by complainant Vinod Kumar son of Shankar Dass, resident of Village Khilchian, who in his statement got recorded with ASI Santosh Kumar of Police Station Jandiala, Amritsar on 24.09.1996, stated that his sister Pushpa Rani (deceased), aged about 24 years was married with Raj Kumar (accused) of Gehri Mandi. Jagdish Chander (accused) happened to be father and Krishna Wanti (accused) mother of Raj Kumar (accused). All three accused used to maltreat and beat up Pushpa Rani, since, they had a grievance that she had not brought adequate dowry at the time of her marriage with Raj Kumar. She used to be driven out of the house by the accused. Said state of affairs continued for about 1 ½ years. Fed up with this maltreatment, Pushpa Devi came to reside with her parents, where she remained for about one year; that about four months prior to the incident, the accused along with some respectable persons of Gehri Mandi came to the house of the complainant in the form of a panchayat for the purpose of re-approachment. Gurbhup Singh and Hans Raj, member panchayat of Village Khilchian had also joined such talks for compromise. Gurdip Singh son of Wazir Singh of Guru Nanak Pura, Amritsar, husband of sister of father of Raj Kumar was also there with the accused at that time. The accused had made a commitment that they would not harass Pushpa Rani in future and would not raise any demand for dowry, therefore, Pushpa Rani was sent along with the accused. On

16.09.1996, Vinod Kumar along with his uncle Rajinder Kumar went to the house of the accused to see Pushpa Rani, however, on reaching there, they saw her dead body lying on a block of ice. The complainant suspected that accused had caused her death. Leaving Rajinder Kumar there, complainant Vinod Kumar was proceeding towards Police Station Jandiala to report the matter to the police. On the way, he came across ASI Santosh Kumar, In-charge, Police Post Gehri Mandi and got his statement Ex.PA recorded with him. ASI Santosh Kumar did not suspect commission of any offence, therefore, he made his endorsement Ex.PA/1 below such statement and sent ruqa to police station for making entry in the daily diary register, which was accordingly done. Copy of daily diary register being Ex.PM. ASI Santosh Kumar then went to the house of the accused. He carried out inquest proceedings with regard to dead body of Pushpa Rani, preparing inquest report Ex.PN in that regard. Dead body of Pushpa Rani was sent to Civil Hospital, Amritsar for the purpose of getting post mortem examination conducted thereon. On 24.09.1996, Baldev Singh, SHO, PS Jandiala got some verification made and then registered FIR Ex.PG/1 for offences under Sections 498-A, 304-B read with Section 34 IPC. He went to the place of occurrence and prepared rough site plan thereof as Ex.PH. The investigation of this case was marked to ASI Santosh Kumar, who recorded statements of witnesses. Accused were arrested in this case. Statements of witnesses were recorded. Several articles were taken into police possession.

After completion of investigation and other formalities, the

challan against the accused was prepared and filed in the Court of Illaqa Magistrate at Amritsar, who supplied copies of documents relied upon in the challan to the accused free of cost as provided under Section 207 Cr.P.C and then finding that the offence under Section 304-B IPC was exclusively triable by the Court of Session, committed the case to the Court of Sessions Judge, Amritsar, from where, it was assigned to Addl. Sessions Judge, Amritsar.

On receipt of the case, finding a prima facie case, charge for offences under Sections 304-B and 498-A IPC was framed against the accused, to which, they pleaded not guilty and claimed trial. However, during the pendency of the trial, accused Jagidsh Chander had expired.

During the course of prosecution evidence, it examined inasmuch as 09 witnesses, as per details below:-

PW-1 Vinod Kumar-complainant repeated on oath the assertions as made in his statement to police Ex.PA.

PW-2 Dr. Gurmanjit Rai stated that on 17.09.1996, he along with Dr. Gurpal Singh, had conducted the post mortem examination on the dead body of Pushpa Rani. Viscera was taken and sealed in a box which along with sample seal was sent to Chemical Examiner through the police officials. Viscera in separate jar was also sent to Head of Pathology, Department of medical College, Amritsar and on receipt of Chemical Examiner report, the cause of death was found to be Aluminum Phosphide, which was sufficient to cause death in the ordinary course of nature. He proved copy of post mortem report as Ex.PB; opinion about

cause of death Ex.PD; report of Pathology Ex.PF.

PW-3 Inspector Baldev Singh, SHO, P.S. Civil Lines, Amritsar who had got the FIR registered and carried out initial investigation and on completion of investigation had filed the challan in the Court deposed in that regard.

PW-4 Surjit Singh, aged about 45 years, a teacher by profession, resident of Village Khilchian, stated that he knows Vinod Kumar, since he resides near his house and is on visiting terms with him. Pushpa Rani was sister of Vinod Kumar. She was married with Raj Kumar accused in December 1992; that Raj Kumar, his father Jagdish Chander and mother Krishna Wanti used to maltreat Pushpa Rani, saying that their son was not working, as such, were demanding money for their son. They also complained that less dowry was given and when the accused maltreated the deceased, she came back to her parental house about 3/4 months of her marriage, staying there for about one year and thereafter, some compromise was effected between the parties in the presence of Mohan Singh Sarpanch of Village Gehri. He further stated that after the compromise, he had gone with Vinod Kumar to Pushpa Rani and she complained that she was being maltreated and demand of money was being made by the accused. He further stated that on 16.09.1996, he was informed by Vinod Kumar PW regarding death of Pushpa Rani and then, he accompanied Vinod Kumar along with some other persons of the village and saw dead body of Pushpa Rani was lying on a block of ice. The accused told them that they had not killed the deceased and then they

had gone to police station for getting the post mortem examination conducted. The witness suspected that some poison was given to the deceased by injection or otherwise.

PW-5 HC Lakhbir Singh being who had participated in the investigation deposed regarding his role.

PW-6 HC Surinder Pal, a formal witness tendered his affidavits Ex.PK.

PW-7 HC Bhupinder Singh, another formal witness tendered his affidavits Ex.PL.

PW-8 Hans Raj, Member Panchayat of Village Khilchian stated that Shankar Dass Arora is of his village and Pushpa Rani was his daughter who was married with Raj Kumar about 10 years earlier; that they had differences over the dowry articles and thus, their relations were not cordial; a compromise was got effected in between them by the panchayat and accused had agreed not to harass her; she was taken along with by the accused; she stayed with accused about 3/4 months after the compromise. He stated that he does not know the cause of her death but she had died at the house of her in laws after 3/4 months of the compromise.

PW-9 ASI Santosh Kumar, SSP Office, Gurdaspur who had conducted the investigation in this case partly deposed in that regard.

On conclusion of prosecution evidence, statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to

them but they denied the same, contending that they were innocent and had been falsely involved in this case.

In their defence, they had examined DW1 Surinder Singh. Accused Raj Kumar had filed written reply, refuting the allegations of prosecution, stating that he was living separately from his parents in the house of Surinder Singh; that Pushpa Rani was a short tempered woman; he was at shop when he came to know that Pushpa Rani was in a serious condition and thereafter he immediately rushed to his home and found Pushpa Rani dead. DW1 Surinder Singh stated that Raj Kumar had taken a room in his house on rent about three months before the incident, where he was living along with his wife.

After hearing arguments, learned Sessions Judge (ad hoc), Amritsar, convicted the accused for offence under Section 498-A IPC, whereas, acquitted them for offence under Section 304-B IPC. Raj Kumar and Krishna Wanti accused who were convicted under Section 498-A IPC were sentenced to undergo RI for three years each and to pay a fine of Rs.1000/- each and in default of payment of fine, to undergo RI for one month each. This was done, vide judgment dated 24.12.2002.

Both the accused/convicts felt aggrieved by the judgment and had preferred an appeal i.e. CRA-S-172-SB-2003 before this Court, praying that the appeal be accepted; the judgment of their conviction and sentence be set aside and they be acquitted of the charge framed against them, whereas, the complainant was dissatisfied with the judgment so delivered and had preferred a criminal revision i.e. CRR-2094-2003,

praying that the same be accepted; accused be convicted and sentenced for offence under Section 304-B IPC and heavy fine be imposed, which be given as compensation to the family of the deceased. State of Punjab had also filed a separate appeal i.e. CRA-D-668-DBA-2003, praying that accused/convicts be sentenced for offence under Section 304-B IPC. Since all the cases arose out of the single judgment, they have been heard together.

There is no representation on behalf of the complainant/victim in CRA-S-172-SB-2003 and on behalf of the petitioner(s) in CRR-2094-2003.

Under the circumstances, Mr. H.S. Randhawa, Advocate, present in the Court, is appointed as amicus curiae to assist the Court on behalf of the complainant in CRA-S-172-SB-2003 and on behalf of the petitioner(s) in CRR-2094-2003. The Registry is directed to hand over a complete copy of paper book to the learned amicus curiae. He shall be paid remuneration by the High Court Legal Services Committee, as per rules.

We have heard learned counsel for the appellant(s)/accused/convicts, learned counsel for the complainant/revisionist as well as learned State counsel besides going through the record and we find that the judgment delivered by learned Addl. Sessions Judge (ad hoc) Amritsar, convicting the accused for offence under Section 498-A IPC and acquitting them for offence under Section 304-B IPC is not sustainable, since, it is based upon misappraisal of evidence and wrong

interpretation of law. As it transpires, deceased Pushpa Rani was married with Raj Kumar about three years prior to the incident. Pushpa Rani had died an unnatural death, due to poisoning, as deposed by PW2 Dr. Gurmanjit Rai, who had performed post mortem examination on the dead body of Pushpa Rani. From the statement of PW1 Vinod Kumar, brother of deceased and PW4 Surjit Singh, it comes out that the deceased used to be harassed and maltreated by her husband, soon before her death. Thus, all the necessary ingredients of offence under Section 304-B IPC stands proved. The impugned judgment is self-contradictory. The trial judge convicted Raj Kumar and his mother Krishna Wanti for an offence under Section 498-A IPC for cruelty meted out to the deceased, relating to demand for dowry but on the other hand, acquitted the accused for an offence under Section 304-B IPC. The trial Court clearly fell in error in doing so, resulting in miscarriage of justice. Learned counsel for accused/convicts had argued that the deceased was harassed and maltreated by the accused in connection with demand of dowry soon before her death, the pre-requisite for proving under Section 304-B IPC is missing. He has pointed out that PW1 Vinod Kumar had not specifically stated that after the compromise was reached between Pushpa Rani and her husband Raj Kumar and in-laws and she had returned to the matrimonial home, the accused had raised any demand of dowry. With regard to PW4 Surjit Singh, he contended that though Surjit Singh had stated so but he being just a neighbour, it is highly unlikely that he would have gone to the matrimonial home of Pushpa Rani and Pushpa Rani

would have stated so to him and furthermore, in his statement under Section 161 Cr.P.C., he had not made any such contentions. But when we see statement of PW1 Vinod Kumar minutely, it comes out that the harassment and maltreatment of deceased was there soon after her marriage onwards and there is nothing to show that there was change in the behaviour of the accused after return of Pushpa Rani to the matrimonial home under the compromise about four months prior to the incident. Surjit Singh PW4 had categorically deposed in that regard, though, he was cross examined and confronted with his statement to the police Ex.DA, where there was no reference to demand of money but it was specifically mentioned that her in-laws were maltreating her. What could be other possible motive for harassment of the deceased except demand of dowry, it can be inferred that such demand of dowry was continuous.

Learned counsel for the accused/convicts had referred to judgment by the apex Court **Satvir Singh Vs. State of Punjab, 2001 (4) RCR (Criminal) 355**, wherein in para No.23 of the judgment, it was observed as under:-

“23. It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if [Section 304B](#) 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.”

He had further placed reliance upon judgment **Major Singh and another Vs. State of Punjab, 2015 CriLJ 2593** by the Apex Court, wherein in para No.15, it was observed as under:-

*“15. To attract conviction under **Section 304B** IPC, the prosecution should adduce evidence to show that "soon before her death", the deceased was subjected to cruelty or harassment. There must always be proximate and live link between the effects of cruelty based on dowry demand and the concerned death. In the case of **Hira Lal & Ors. vs. State(Govt. of NCT) Delhi, (2003) 8 SCC 80**, in paragraph (9) it was observed as under:-*

*“9. A conjoint reading of **Section 113-B** of the Evidence Act and **Section 304- B** IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of "death occurring otherwise than in normal circumstances". The expression "soon before" is very relevant where **Section 113-B** of the Evidence Act and **Section 304-B** IPC are pressed into service. The 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 the prosecution. "Soon before" is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of 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 113-B](#) of the Evidence Act. The expression "soon before her death" used in the substantive [Section 304-B](#) IPC and [Section 113-B](#) 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 the expression "soon before" 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 their 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 cruelty or harassment concerned 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 death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence."

He has further pressed into service judgment **C. Magesh &**

Ors. Vs. State of Karnataka, 2010 (3) RCR (Criminal) 382 by the

Apex Court, wherein in para Nos.39 & 40, it was observed as under:-

“39. In an appeal preferred under Section 378 of the Cr.P.C., no doubt, it is true that High Court has ample powers to go through the entire evidence and to arrive at its own conclusion but before reversing the finding of acquittal, following conditions should be always kept in mind namely,

(i) the presumption of innocence of the accused should be kept in mind;

(ii) if two views of the matter are possible view favourable to the accused should be taken;

(iii) the appellate court should take into account the fact that the trial judge had the advantage of looking at the demeanor of witness; and

(iv) the accused is entitled to benefit of doubt. But the doubt should be reasonable that is the doubt which rational thinking man with reasonable honesty and consciously entertained, more so, when the larger question with regard to treating Exh. P29 and Exh. P30 as dying declarations itself had become questionable.

40. There was no occasion for the High Court to have passed order of conviction on the same, that too without removing the doubts with regard to correctness, legality and propriety of two dying declarations.”

On the other hand, learned counsel for the complainant/revisionist has referred to various judgments, first being **State of Haryana Vs. Ram Kumar, 2008(4) RCR (Criminal) 308** by a Division Bench of this Court, wherein, it was observed that when a bride is turned into a corpse, it is the family members living with her who have to explain the circumstances in which it happened and in an appeal against acquittal, interference is permissible only if reasons given by the trial Court are perverse, however, at the same time, where acquittal results in miscarriage of justice, the appellate Court will be justified in

interfering with the acquittal. It was further held that in case of dowry death, once cruelty is proved, there is presumption of continuity, unless contrary is proved.

In the next judgment referred to by him, **Rajinder Singh Vs. State of Punjab, 2015 (2) RCR (Criminal) 129** by the apex Court, the meaning of expression soon before death in Section 304-B was dealt with as follows:-

“The word ‘soon’ does not mean ‘immediate. The expression soon before is a relative expression. Time legs may differ from case to case. All that is necessary is that the demand for dowry should not be stale but should be the continuing cause for the death of the married woman under Section 304-B IPC. It was further observed that “soon before” is not a synonymous with “immediately before”.

In **Bhupendra Vs. State of Madhya Pradesh, 2004 (1) SCC (Cri) 1** by the apex Court, distinction between Section 304-B and Section 306 IPC was given, stating that both the Sections are mutually exclusive. It was held that Section 306 IPC when read with section 113A of the Evidence Act has only enabled the Court to punish a husband or his relative who subjected to woman to cruelty (as envisaged in Section 498A IPC) if such woman committed suicide within 7 years of her marriage; it is immaterial for Section 306 IPC whether the cruelty or harassment was caused “soon before her death” the special provision in Section 304-B IPC would be invocable, otherwise resort can be made to Section 306 IPC.

In this case, it stands adequately established that the deceased was being harassed and maltreated soon before her death. The judgments referred to by learned counsel for the accused/convicts do not come to his rescue due to different facts and circumstances, however, the judgments relied upon by learned counsel for the complainant/revisionist do advance his case. Rather, we find that facts and circumstances show that it was a case of murder but considering the fact that the accused had not been charged for offence under Section 302 IPC and the incident is more than 23 years old with one of the accused Jagdish Chander having expired, it would not be proper and appropriate to order fresh trial, directing the trial Court to frame charge for offence under Section 302 IPC against the accused in the alternative and we proceed to decide the case as it is.

Here we may observe that as per plea taken by accused Raj Kumar, which is corroborated by testimony of DW1 Surinder Singh of Gehri Mandi, it comes out that Raj Kumar and deceased Pushpa Rani were residing separately in a rented accommodation belonging to Surinder Singh separate from parents of Raj Kumar. Therefore, Raj Kumar is to explain as to under what circumstances, Pushpa Rani had died an unnatural death as a case of poisoning. The injection marks on her dead body as mentioned in her post mortem report do point out that poison was injected to her. Accused Raj Kumar has failed to explain as to under what circumstances, the poison had entered body of his wife-the deceased, therefore, it is to be taken that he is responsible for her death.

Therefore, there is no reason to acquit Raj Kumar of offence under Section 498-A IPC, rather, his conviction is converted to one under Section 304-B IPC and he is sentenced to undergo RI for 10 years, whereas, Krishna Wanti is acquitted of the charge for offence under Section 498-A IPC, since we do not find sufficient evidence against her for the said offence as well as under Section 304-B IPC.

Accordingly, the appeal filed by the State of Punjab i.e. CRA-D-668-DBA-2003 and criminal revision filed by complainant Vinod Kumar i.e. CRR-2094-2003 are allowed partly qua Raj Kumar, whereas, it is dismissed with regard to Krishna Wanti and the appeal filed by the accused/convicts i.e. CRA-S-172-SB-2003, challenging their conviction is also allowed partly qua Krishna Wanti and is dismissed with regard to accused Raj Kumar. Raj Kumar is stated to be on bail. Chief Judicial Magistrate, Amritsar is directed to issue his re-arrest warrants so as to get him arrested and send him to Central Jail, Amritsar to undergo the remaining sentence.

(JITENDRA CHAUHAN)
JUDGE

(H.S. MADAN)
JUDGE

21.11.2019

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No