

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

CRA-D-162-DB-2003 (O&M)

Date of decision: 06.11.2019

Pawan Kumar

...Appellant

Versus

State of Haryana

...Respondent

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

Present: Mr. Alok Mittal, Amicus Curiae for the appellant.

Mr. Vikrant Pamboo, DAG, Haryana.

H.S. MADAAN, J.

Briefly stated facts of the case as per prosecution version are that Seema wife of accused Pawan Kumar had died as a result of asphyxia on 28.11.1995. The death had taken place within 07 years of her marriage, which as a matter of fact had been solemnized on 09.10.1994. Jagan Nath happens to be father and Smt. Savitri mother of Pawan Kumar, in that way, father in-law and mother in-law of deceased Seema. The dead body had been taken to General Hospital, Panipat on 29.11.1995 for the purpose of conducting post mortem examination thereon. On getting information regarding the incident, the police party from police station Chandni Bagh, Panipat led by ASI Ram Chander (hereinafter referred to as 'IO') had gone there. The IO carried out inquest proceedings with regard to unnatural death of Seema, prepared a report in

that regard. At that place, he came across Shyam Lal son of Charanji Lal, resident of Ward No.10, Kalayat, father of the deceased and who got his statement recorded with the IO, wherein he stated that he had four daughters, namely Sushma, Radha, Renu and Seema, besides one son, namely Mange Ram. That his daughter Seema, aged about 21 years was married with Pawan Kumar son of Jagan Nath, resident of H.No.675, Ph-1, HUDA Colony, Panipat on 09.10.1994, as per Hindu rites and ceremonies and he had spent more than Rs.2 lacs on the marriage. For initial six months, things went on smoothly, thereafter, Pawan Kumar and his father Jagan Nath and mother Savitri started harassing and taunting Seema that she belonged to a poor family. They demanded a scooter from Seema about two months prior to her death. When Mange Ram son of complainant had gone to the house of Seema at Panipat on Bhaiya Dooj festival, then, Seema started crying and told him that she was being harassed and beaten up by the accused persons who were demanding a scooter. On returning home, Mange Ram informed the complainant about such state of affairs. Then, complainant Shyam Lal along with his brother in-law Bal Kishan went to matrimonial home of Seema at Panipat and requested the accused not to harass Seema, since, their demand of scooter would be met on the occasion of Holi, when complainant Shyam Lal would be able to withdraw the money from his GPF account. However, on intervening night of 28/29.11.1995, Shyam Lal received a telephonic message from his daughter Sushma residing at Ambala that Seema had died at Panipat. On coming to know about that, Shyam Lal along with his

son Mange Ram and nephew Krishan and his wife Prem Lata and others went to Civil Hospital, Panipat where complainant Shyam Lal identified the dead body of his daughter Seema which was lying in the mortuary. The IO recorded statement of complainant Shyam Lal as Ex.PG and put his endorsement below such statement and sent ruqa to police station, on the basis of which, formal FIR Ex.PG/2 was recorded. The IO recorded statements of witnesses, got the post mortem examination conducted on the dead body, receiving copy of post mortem report and then the police party went to the spot. The IO prepared rough site plan of the place of incident as Ex.PK. He took into possession small stool lying on the double bed, vide recovery memo. He further sealed parcel containing viscera and a vial containing blood and ornaments of deceased so produced by HC Satbir Singh which had been handed over by the doctor after post mortem examination. At a later stage, investigation of this case was assigned to Inspector Badan Singh who arrested accused Pawan Kumar and interrogated him. During the course of investigation, accused Jagan Nath and Savitri were found to be innocent.

After completion of investigation and other formalities, challan against Pawan Kumar was prepared and filed in the Court of Addl. Chief Judicial Magistrate, Panipat. Such Magistrate supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C and then observing that offence under Section 304-B IPC for which the accused had been booked was exclusively triable by the Court of Session, committed the case to the

Court of Sessions, vide detailed commitment order dated 06.03.1996, from where, it was assigned to Addl. Sessions Judge, Panipat.

Finding a prima facie case, charge for offence under Section 304-B IPC was framed against the accused Pawan Kumar, to which, he pleaded not guilty and claimed trial.

During the course of prosecution evidence, examination-in-chief of complainant Shyam Lal was recorded. Thereafter, the Public Prosecutor moved an application under Section 319 Cr.PC for summoning of Jagan Nath and Savitri as additional accused. That application was allowed, vide order dated 11.03.2000 and both of them were summoned as additional accused to face the trial along with their son and co-accused Pawan Kumar. On appearance of the additional accused, charge for offences under Sections 304-B and 498-A IPC was framed against all the three accused, to which, they pleaded not guilty and claimed trial.

During the course of prosecution evidence, it examined as many as 08 witnesses as per details below:-

PW1 Shyam Lal complainant deposed as per the statement made by him to the police which had formed basis for registration of FIR.

PW2 Sushil Kumar-Photographer stated that on 28.11.1995, he had gone to H.No.675 in HUDA Colony, Ph-II, Panipat on first floor of the house and took snaps of Seema in a hanging position. He proved photographs as Ex.P1 to Ex. P3 and negatives Ex.P4 to Ex.P6.

PW3 Mukesh Kumar, Draughtsman who had prepared the

scaled site plan of the place of incident by going there on 21.12.1995 proved such plan as Ex.PH.

PW4 Mange Ram brother of deceased Seema supported the prosecution story on material aspects.

PW5 Sushma sister of deceased supported the prosecution story on important points.

PW6 Ram Chander ASI who had carried out the investigation in this case initially deposed in that regard.

PW7 Badan Singh, who was assigned the investigation in this case on 29.11.1995 deposed regarding the steps taken by him during the course of that investigation, including arrest of the accused Pawan Kumar; Pawan Kumar suffering a disclosure statement during the course of his investigation but no recovery having been got effected by him in pursuance thereof.

PW8 Dr. R.K. Tandon, who was member of Board of three doctors which had conducted the post mortem examination on the dead body of Seema on 29.11.1995 at about 11.15 am deposed in that regard, stating that in their opinion, the cause of death was due to asphyxia, as a result of hanging. He proved the copy of post mortem examination report as Ex.PM. The prosecution relied upon various documents and after that the evidence of the prosecution was closed.

Statements of all the three accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against the accused were put to them but they denied the same,

contending that they are innocent and have been falsely involved in this case. Accused Pawan Kumar took up a plea that earlier he was married with one Sangam daughter of Sham Sunder Sharma, resident of Sonipat. Sangam had delivered a male child on 17.07.1994 and on account of some complications arising out of the delivery, she died on 19.07.1994 at Jaipur Golden Hospital, Delhi; his marriage with Seema was performed in a simple manner; she was never harassed or tortured by him or by any of the co-accused; no demand of dowry was raised; prior to his marriage with Seema, he was owning a motorcycle, therefore, there was no occasion for him to raise the demand of a scooter; he along with Seema was residing in H.No.675, Ph-I, HUDA Colony, Panipat, whereas his parents namely father Jagan Nath and mother Savitri were residing at Gohana road on the first floor of the shop; they were separate in business as well; after his marriage with Seema, he was addicted to smack and alcohol and Seema was not happy with him on that account and she committed suicide because of aforesaid reason. She was also fed up with small child from his earlier wife. That after death of Seema, her body was cremated at Panipat at Shivpuri Assandh Road and a receipt on account of the charges paid by him was also with him, which being Ex.DD. That on 28.11.1995, they had made a telephonic call informing about death of Seema to Ambala as well as to Kalayat. Receipts of PCO were Ex.DE, Ex.DF, Ex. DG, Ex.DF/1 and Ex.DG/1. This accused further stated that he was given treatment at Red Cross, Panipat and in another hospital at Jagraon, Panipat and at Delhi for de-addiction. He stated that

after his marriage, he had purchased a new motorcycle having registration No.HR-06-C-2156, documents in that regard being Ex.DH and Ex.DH/1.

During their defence evidence, accused examined Sh. Som Nath Katyal, Govt. Contractor, as DW1 who deposed regarding separate residence of Jagan Nath and Savitri from Pawan Kumar.

Dr. Sharda Arora Project Director, De-addiction Centre, Panipat as DW2 and DW3 Dr. Ankur Singal, Red Cross Hospital, Panipat deposed regarding Pawan Kumar accused being admitted in their institutions for the purpose of de-addiction.

DW4 Sham Sunder Sharma, father of first wife of Pawan Kumar stated that his daughter was not maltreated by Pawan so long as she remained with him and she had died while delivering a child.

Dr. B.B. Sharma, Senior Lecturer and Co-ordinator, Arya College, Panipat appearing as DW5 stating that about his having been a tenant on the ground floor of H.No.675, HUDA Colony, Ph-1 Panipat in the month of November 1995.

After hearing arguments, learned Addl. Sessions Judge, Panipat, convicted accused Pawan Kumar, whereas, the other two accused were acquitted of the charge framed against them, vide judgment dated 04.12.2002 and sentenced accused Pawan Kumar, vide order of sentence dated 10.12.2002 and sentenced him to undergo life imprisonment under Section 304-B IPC.

Pawan Kumar-accused/convict felt aggrieved by the said judgment and has approached this Court, by way of filing an appeal,

notice of that was issued to the State, which has put in appearance through counsel.

We have heard learned counsel for the parties besides going through the record.

In this case, the marriage between Pawan Kumar and deceased Seema had taken place on 09.10.1994. Seema had died an unnatural death by committing suicide by way of hanging in the matrimonial home itself on 28.11.1995 i.e. within seven years of marriage. The crucial thing to be seen is as to whether she was being harassed and maltreated by her husband Pawan Kumar on account of demand of dowry and she had taken the extreme step for the said reason or commission of suicide by her was on account of some other reason. Complainant Shyam Lal, father of deceased Seema in the statement made by him to the police, which formed the basis for registration of the FIR had categorically stated that the accused had been harassing his daughter Seema, raising a demand of scooter and he had assured the accused that he would give the scooter after withdrawing the money from his GPF account on the occasion of Holi. His son Sh. Mange Ram, who happened to be brother of the deceased had lent corroboration to PW1 Shyam Lal so had PW5 Sushma sister of the deceased. Though, all the three of them were cross examined at length on behalf of the accused but they stuck to their guns. We have no reason to doubt the contentions raised in that regard by these witnesses.

As regards father of first wife of Pawan Kumar coming and

saying that no such demand of dowry had been raised from his deceased daughter, that also does not help the accused much. Human nature is something which is very difficult to predict or understand. How and when greed will overpower a person is difficult to anticipate. One may be extremely nice in behaviour with a particular person but become very rude and arrogant while behaving with another person. Thus, testimony of this witness does not help the accused much.

The plea taken by the accused that Pawan Kumar was already having a motorcycle, so, there was no reason for him to raise demand of scooter, does not convince us. Greed of a person for material objects many at times defy a rationale. Merely because a person is well off financially does not mean that his lust for money and more material objects comes to an end or minimized. Many a times persons of means having considerable wealth show greed for petty articles and for very small sums. Thus, financial status of a person does not mean an end to his greed for more money and material articles. Even otherwise presumption under Sections 113-A and 113-B of the Evidence Act is against the accused. Here all the necessary ingredients of offence under Section 304-B IPC are fulfilled.

The reasons suggested by the accused that the deceased might have committed suicide since he had become a drug addict and was admitted in several de-addiction centres, does not seem to be plausible in view of the overwhelming evidence adduced by the prosecution by examining father, brother and sister of the deceased that accused used to

harass and maltreat the deceased in connection with demand of dowry. The prosecution had successfully proved its charge against the accused for offence under Section 304-B IPC. As such, he was rightly convicted by the trial Court and no ground is there to interfere with the judgment passed by the trial Court in that regard, which as a matter of fact is well reasoned and does not suffer from any illegality or infirmity, rather, is based upon proper appraisal of evidence and correct interpretation of law. Therefore, the conviction of the accused for the offence under Section 304-B IPC is upheld. However, as regards the sentence part, we find that though the accused/appellant has committed a heinous crime but considering the fact that two children of marriageable age are dependent upon him, it shall be proper and appropriate to reduce the sentence of life imprisonment and ends of justice shall be adequately met, if the same is reduced to 07 years of rigorous imprisonment, the minimum prescribed for the offence. The appeal is allowed partly inasmuch as it is dismissed as far as the conviction part is concerned, however with regard to quantum of sentence, the same is reduced to RI for 07 years. The accused be taken into custody and sent behind bars to undergo the remaining sentence.

(JITENDRA CHAUHAN)
JUDGE

(H.S. MADAAN)
JUDGE

06.11.2019

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Whether speaking/reasoned :

Yes

No

Whether Reportable :

Yes

No