

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

CRA-S-1177-SB of 2002

Date of decision: February 27, 2019

Dharambir

.....Appellant

Versus

State of Haryana

....Respondent

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. B.S. Saroha, Advocate for the appellant.

Ms. Kirti Singh, DAG Haryana.

HARNARESH SINGH GILL, J

Being aggrieved by the judgment/order dated 10.07.2002/12.07.2002 passed by the learned Additional Sessions Judge (Adhoc), Hisar, by which the learned trial Court convicted the appellant for commission of offence punishable under Section 304-B of the Indian Penal Code, 1860 (for short 'IPC') and sentenced him to undergo rigorous imprisonment for 10 years, the present appeal has been preferred by him.

FACTS

2. The prosecution case, in brief, is that the complainant Chiranji Lal's daughter Jagmati was married to Dharambir-appellant on 07.03.1996. At the time of *Bana* ceremony, ₹11,000/- were given and the same amount was given at the time of marriage. Jagmati went to her in-laws house and right on the date of marriage, Dharambir (son-in-law) Sahej Ram (father-in-law), Mayawati (mother-in-law) and Kulwant Singh (brother-in-law) showed

unhappiness and taunted Jagmati for bringing less dowry. On 08.03.1996 (next day), the marriage of his two sons namely Ram Singh and Ramesh was to be solemnized but Dharambir did not attend the marriage as Jagmati brought less dowry and she did not bring ₹21,000/- as demanded by them but later Jagmati went to her in-laws house. After some days, Ramesh (brother of Jagmati) went to the in-laws house of his sister. Then Jagmati told Ramesh regarding ill-treatment with her by her in-laws family. Ramesh brought all the facts in the knowledge of her father Chiranji Lal. Later Chiranji Lal sent her elder son Ramesh who brought Jagmati to her parental house in January 1997. Sahej Ram and family were adamant and were asking for dowry. Panchayat went to persuade the in-laws family of Jagmati thus, Dharambir took Jagmati to her matrimonial home but she was again given beatings and Jagmati was brought back to her parental house. That after some time the matter was again settled and Dharambir and his brother-in-law-Kulwant came and took Jagmati to her matrimonial home. On 30.12.1998, Mange Ram and Bhoop Singh went to the house of Chiranji Lal and informed that Jagmati has consumed poison. The complainant along with his brother Dharambir went to the in-laws house of her daughter Jagmati where her mother-in-law Mayawati informed that Jagmati has been taken to village Meham Kheri. On enquiry from village, Chiranji Lal came to know that Jagmati was compelled to consume spray chemical (Monochrotophos-an organo phosphorus pesticide) by her husband Dharambir, Sehaj Ram (father-in-law), Mayawati (mother-in-law) and Kulwant Singh (brother-in-law) on account of bringing less dowry. From Meham Kheri, Jagmati was taken to Medical College, Rohtak. That on the

complaint of Chiranji Lal, an FIR No.805 dated 31.12.1998, under Sections 304-B, 498-A, 34 IPC was registered at Police Station Sadar Hisar.

3. That after investigation of case, challan under Section 304-B, 498-A, 34 IPC against Dharambir (husband of the deceased), Sehaj Ram (father-in-law), Mayawati (mother-in-law) and Kulwant (brother-in-law) was presented and the case was committed to the Court of Sessions vide order dated 14.05.1999.

4. Charge under Section 304-B IPC was framed against the accused. All the accused pleaded not guilty and claimed trial.

5. Prosecution entered into evidence and examined nine witnesses i.e. PW-1 Constable Telu Ram, PW-2 Head Constable Randhir Singh, PW-3 Constable Sombir Singh, PW-4 Tilak Raj, PW-5 Chiranji Lal (father of the deceased), PW-6 Ramesh Kumar (brother of the deceased), PW-7 ASI Raghubir Singh, PW-8 Constable Ganga Dutt and PW-9 Dr.R.P.Caloniya.

6. Vide judgment dated 10.07.2002 passed by Additional Sessions Judge, accused Dharambir was convicted under Section 304-B IPC whereas accused Sahej Ram, Mayawati and Kulwant were acquitted of the offence charged.

ARGUMENTS

7. As per the learned counsel for the appellant, Chiranji Lal-father of deceased Jagmati stated it was Sahej Ram who demanded cash at the time of marriage and PW-6 Ramesh Kumar, who went to the in-laws house of Jagmati where she informed Ramesh Kumar that she was being subjected to cruelty by all the accused on account of inadequate dowry.

8. Learned counsel for the appellant has further stressed on the

point that it was Ramesh Kumar (PW-6) who informed his father that Jagmati was subjected to cruelty in her in-laws house. This witness had not given any statement under Section 161 of the Code of Criminal Procedure ('Cr.P.C' for short) before the police whereas the father of the deceased namely Chiranji Lal who appeared as PW-5 stated that Sahej Ram demanded Rs. 21,000/- at the time of marriage. No specific accusations in evidence has been made by Chiranji Lal against appellant Dharambir and there is no demand on behalf of appellant Dharambir at any stage.

9. *Per contra* as per learned State counsel, the prosecution have proved that soon after the marriage, deceased Jagmati was subjected to cruelty in connection with demand of dowry. He has argued that PW-5 Chiranji Lal has specifically stated that there was demand of dowry and since it was not fulfilled by the parents of the deceased, Dharambir did not attend the marriage of his two brothers-in-law which took place on 8.3.1996. Learned State counsel has also relied upon the statement of Ramesh Kumar PW-6, brother of deceased Jagmati, who stated that Jagmati told him on the next day of her marriage that Dharambir and his family were not satisfied with the dowry and she was being taunted by them. It has been further argued by the learned State counsel that the marriage took place on 8.3.1996 whereas Jagmati died on 30.12.1998 i.e. within seven years of marriage, which gives rise to presumption.

CONSIDERATION

10. We have heard learned counsel for the appellant as well as the learned State counsel and have gone through the record carefully.

11. It is a case in which Jagmati consumed poison/spray and died on

30.12.1998. As per the FSL report Ex. P16/A, the deceased had died due to poisoning (Monochrotophos- an organo phosphorus pesticide).

12. It is a specific case where PW-5 Chiranji Lal, father of the deceased has stated that he had given ₹11,000/- as *Daan* at the time of marriage of her daughter but Sahej Ram, father-in-law of the deceased, wanted an amount of ₹21,000/-. He did not depose about any demand by the appellant. Thus, it is manifest that the demand was not made by appellant Dharambir.

13. The next witness examined by the prosecution was PW6- Ramesh Kumar, the brother of the deceased-Jagmati. Ramesh Kumar deposed that Jagmati came to attend the marriage of her brother next day and she told Ramesh Kumar that her in-laws were not satisfied with the dowry and were demanding ₹21,000/- as against the amount of ₹11,000/- which was paid. Ramesh Kumar then deposed that he again met his sister Jagmati after 15 days in her in-laws house when she told him that she was subjected to cruelty by all the accused persons due to the same reason, namely non-payment of amount of ₹21,000/-. In the first place, he has not specified as to the specifics regarding cruelty by each of the accused about which she told him. What role was played by the appellant-Dharambir when she was subjected to cruelty as stated by him has not come on record anywhere. On the contrary, as discussed earlier, the evidence of PW5-Chiranji Lal, father of Ramesh Kumar indicated that Sahej Raj, father-in-law of the deceased-Jagmati had demanded an amount of ₹21,000/-. There is, therefore, a serious discrepancy in this evidence. It is significant to note that during the entire investigation or at any point thereafter, Ramesh Kumar was never

interrogated nor there is any statement on record under Section 161 Cr. P.C. In other words, Ramesh Kumar gave his statement before the Court for the first time and there was thus, no previous statement on record for corroboration to his version. He has not given any explanation as to why he did not get his statement recorded under Section 161 Cr. P.C. by participating in the investigation. We do not mean to say that evidence for the first time in the Court would be worthless. What we say is that such an evidence then has to be very carefully examined and may require even corroboration. The evidence of PW6-Ramesh Kumar for the first time in the Court that too in the vague manner do not inspire our confidence in the absence of any explanation. His version is, therefore, improved version and it would be dangerous for us to rely on his testimony for convicting a person.

14. Section 161 Cr. P.C. reads thus:-

“161. Examination of witnesses by police.

(1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a

separate and true record of the statement of each such person whose statement he records”

15. Perusal of the above provision of Section 161 Cr. P.C. shows that the witnesses can make a disclosure at the earliest so that the Court does not finally view the matter with any suspicion. After completion of investigation, the police is required to file a charge-sheet or final report under Section 173 Cr. P.C. The copy of the charge-sheet is supplied to the accused in order to have a fair trial and with a view that the accused should be allowed to know the prosecution case against him. It is in this background, the evidence of Ramesh Kumar we find, is doubtful. In that view of the matter, we are unable to rely on the testimony of PW6-Ramesh Kumar. To repeat as stated earlier by us, even otherwise, his evidence is not specific atleast qua the present appellant.

16. The Hon'ble Supreme Court in **Mungeshwar Prasad Chaurasia versus State of Bihar**, 2002(1) R.C.R. (Criminal) 621 has held as under:-

“4. Learned counsel for the appellants submitted that A1-Mungeshwar Prasad and his wife A3-D Devanti Devi are very old people having crossed 80 years of age even at the time of death of Sudama Devi. The plea made on that score was to have the sentence reduced. But when we perused the evidence of prosecution, we have noticed that the prosecution did not succeed in showing that the present appellants did anything for subjecting Sudama Devi to harassment with the demand for dowry "soon before her death". PW 1 to PW 4 were the witnesses examined by the prosecution to prove that Sudama Devi was subjected to harassment with the demand for dowry. All of them said in one accord that husband of

Sudama Devi demanded dowry a few months prior to her death. Even if the said period can be treated as falling within the proximity range of "soon before death", the said acts can be attributed only to Ram Pukar - the husband of the deceased Sudama Devi. None of the witnesses said either directly or indirectly that the present appellants did anything during the said period as against Sudama Devi. Of course, some of the witnesses said that soon after marriage, these appellants asked for more dowry. But that demand was made at a time which was beyond the range of "soon before death" of the deceased.

5. In the above circumstances, it is difficult to sustain the conviction under Sections 304(B) and 498(A) of the Indian Penal Code so far as the appellants are concerned. As Section 201 of the substantive offence, we think it is an idle exercise to consider whether conviction under Section 201 Indian Penal Code can independently be fastened with the appellants. We, therefore, allow the appeal and set aside the conviction and sentence passed on the appellants. They are acquitted."

17. Similar view has been taken by the Hon'ble Supreme Court in **Satpal versus State of Haryana**, 1999 AIR (SC) 1476 which reads thus:-

"3. Disputing the said contention of the learned counsel for the appellant, Mr. Prem Malhotra, the learned counsel appearing for the respondent, has submitted that the death had taken place within seven years of marriage and the brother of the deceased had deposed about the demand of dowry and the humiliation of the deceased on account of such dowry demand. He has also submitted that aluminium phosphates is not expected to be consumed by the deceased inadvertently. If the prosecution establishes that the deceased had been subjected to mental torture and cruelty on account of demand for dowry it

can reasonably be presumed that being humiliated and mentally tortured, the deceased had consumed the said poison to end her life. Accordingly the presumption of Section 13-B is attracted in the facts of the case and the conviction under Section 304-B and also under Section 306 Indian Penal Code cannot be held to be illegal. Mr. Malhotra submitted that in any event, the conviction under Section 498-A, Indian Penal Code is fully justified because there is clear evidence that on some occasions the deceased was humiliated for insignificant presents which were sent from the house of the parents of the deceased and for the purpose of conviction under Section 498-A it is not necessary that there should be demand of dowry. Since the mental torture and cruelty has been established there was no difficulty in convicting the appellant under Section 498-A of the Indian Penal Code.

4. After giving our careful consideration on the facts and circumstances of the case and the evidence through which we have been taken by the learned counsel for the parties, it appears to us that there is no convincing evidence on the basis of which any finding can be made that the deceased had committed suicide by consuming poison. Mere possibility of such consumption of poison by her is not sufficient for conviction under Section 306 Indian Penal Code. The possibility of death by other means must be ruled out. It also appears to us that so far as demand for dowry is concerned, there is hardly any convincing evidence for which conviction under Section 304-B can be made. Therefore, in our view, the conviction under Section 306 Indian Penal Code and the conviction under Section 304-B Indian Penal Code of the appellant have been made in the absence of sufficient evidence. We, therefore, set aside such convictions and sentences passed against the appellant. But so far as the conviction of the appellant under Section 498-A Indian Penal Code is concerned,

it appears to us that there is direct and convincing evidence that the deceased had been humiliated and treated with cruelty on some occasions by the appellant and also the co-accused who had died before the trial. Therefore, the conviction under Section 498-A Indian Penal Code is justified in the facts and circumstances of the case and there is no occasion to interfere with such conviction and sentence passed against the appellant. The appellant is stated to have already served out the sentence for the conviction under Section 498-A Indian Penal Code, his bail bond should stand discharged, The appeal is disposed of accordingly.”

Thus, keeping in view the facts and circumstances and evidence on record, the appeal deserves to be allowed. In the result, we make the following order:-

ORDER

- (i) **CRA-S-1177-SB of 2002** is allowed;
- (ii) The judgment/order dated 10.07.2002/12.07.2002 passed by the learned Additional Sessions Judge (Adhoc), Hisar, is set aside;
- (iii) The appellant is acquitted of the charges framed against him.

(A.B. CHAUDHARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

February 27, 2019

mahavir

Whether speaking/ reasoned: **No**

Whether Reportable: **No**