

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CRA-D-159-DB of 2010
Date of decision:22.08.2022**

Jamshed

---Appellant

versus

State of Haryana

---Respondent

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present: Mr. Mohd. Arshad, Advocate
for the appellant

Mr. Hitesh Pandit, DAG, Haryana

JAGMOHAN BANSAL, J.

1. The appellant-Jamshed through the instant appeal is seeking setting aside of order dated 17.12.2009 passed by the Learned Additional Sessions Judge, Nuh (in short "ASJ") whereby he has been convicted and sentenced under Section 304B of the Indian Penal Code (in short "IPC") to undergo rigorous imprisonment for life and a fine of Rs. 5000/-. The appellant has been further awarded sentence of rigorous imprisonment for a period of two years and a fine of Rs. 1000/- for the offence punishable under Section 498A IPC. It has been further held that in case of default of payment of fine, the appellant shall further undergo imprisonment for a period of three months. The sentences awarded under different Sections of IPC are ordered to run concurrently.

2. The brief facts leading to conviction of appellant and filing of present appeal are that marriage was solemnized between Reshmi and Jamshed-appellant on 07.05.1998 as per muslim rites. Reshmi died on 04.07.1998 i.e. within two months from the date of marriage.

The case of the prosecution was that Reshmi was harassed for bringing less dowry. On 23.05.1998, appellant visited house of his in-laws and demanded motorcycle in the presence of PW-2 Maqsood, the brother of the deceased and her uncle Deenu. The family of the deceased expressed its inability and appellant left his wife Reshmi at her parental home. On 30.06.1998, Sehzaad the brother-in-law of the deceased dropped the deceased to the house of her in-laws. In the morning, Jagmal-complainant, father of the deceased received a phone call from his other son-in-law Jaikam that Reshmi had died during the previous night. The complainant reached the house of the accused and came to know that his son-in-law Jamshed (appellant herein), his parents and his brother-in-law have killed Reshmi by throttling.

The incident was reported to the police at 3.45 p.m. on 04.07.1998 at Police Station Tauru and in response to the statement made by complainant-Jagmal, an FIR was registered under Sections 498A and 304B IPC.

The spot was inspected by S.I. Amar Nath, Police Line, Nuh. The statements of Deenu and Maqsood were recorded at the spot at about 3.30 p.m. The investigation continued till 10-30 p.m.

On 07.07.1998 the appellant was arrested by PW-5 S.I. Amar Nath.

The inquest report of the dead was prepared and was sent for post-mortem examination. The post-mortem was conducted by PW-7 Dr. M.S.Ranga. On examination of the dead body, the following injuries were noticed:-

“ 1) Multiple abrasion of various shapes and sizes as shown in the fig X detected over the both sides of the neck 2 cm lateral to larynx on either side and 2 cm below the left angle of jaw and 2.5 cm below the right angle of jaw both sides lying 6 cm apart to each other.

2) Two abrasions on left side were of crescent shape like nail marking.

No injury mark detected over the back of the neck. On dissection on both sides subcutaneous tissue was slightly congested with dilated blood capillaries more so marked on right side with no detectable injury to underlying muscles and blood vessels. Hyoid bone was found healthy. Thyroid cartilage, upper part larynx slightly congested with internal lying of trachea soiled with blood stained froths and internal lying congested with healthy trachea rings. No other external mark injury detected all over the body.

Cause of death in this case was due to cardiac inhibition added with asphyxia, resulting from manual throttling which was ante mortem and sufficient enough to cause death in ordinary course of life.”

3. The police after completing investigation filed report under Section 173 of the Code of Criminal Procedure (in short “CrPC”) against Jamshed-appellant and all other family members were placed in Column No. 2. The learned ASJ framed charges under Sections 498A, 304B and 302 IPC against the appellant who did not plead

guilty and claimed trial.

4. The prosecution moved an application under Section 319 CrPC for summoning the additional accused(s). The said application was allowed vide order dated 07.10.1999 and accordingly Sakina, Sehzaad and Imamuddin were summoned and charged under Sections 498A and 304B IPC.

5. The trial against co-accused culminated into conviction under Sections 304B and 498A IPC on 14.08.2001 since appellant was declared proclaimed offender vide order dated 19.07.2001 and he was re-arrested and supplementary challan was filed against him. Learned ASJ vide order dated 04.08.2009 framed charges under Sections 304B and 498A IPC to which the appellant did not plead guilty and claimed trial.

6. The prosecution examined 07 witnesses during the course of trial and the material witnesses examined were PW-1 Jagmal-complainant (father of the deceased), PW-2 Maqsood-brother of deceased and PW-7 Dr. M.S.Ranga, Medical Officer CHC, Nuh.

PW-1 Jagmal-complainant deposed that his daughter Reshmi was married to appellant-Jamshed according to muslim rites on 07.05.1998 and he had spent more than his financial capacity; there was no demand of dowry before marriage, however, after about five days of marriage when his daughter came back to their home, she told him that her husband and other family members were demanding dowry and complaining for not bringing motorcycle and

thereafter, after about 15 days, Jamshed came to their house and they told him that they were not in a position to give motorcycle; on this Jamshed (appellant herein) got annoyed and left home without taking away Reshmi (the deceased); after about 10/12 days, Sehzaad brother-in-law of deceased came to their home and took away Reshmi and dropped her at her matrimonial home; on third day, he received message that his daughter Reshmi has been killed. Then he alongwith his son and four other persons went to the house of accused and found his daughter dead; he asked the appellant and other family members that why they had killed his daughter to which appellant replied that they had killed his daughter and he could do whatever he could. Thereafter, he (complainant) went to the police and gave list of dowry articles which he had given at the time of marriage; appellant and his other family members tried to escape from the spot, however, the appellant was apprehended.

7. PW-2 Maqsood, brother of deceased, deposed on the lines of PW-1-Jagmal, father of the deceased.

8. PW-7- Dr.M.S.Ranga, Medical Officer, CHC, Nuh, deposed that he conducted postmortem on the request of police on the body of Reshmi. He further disclosed about the articles found on the person of the deceased as well as state of the body of the deceased.

The aforesaid Medical Officer further disclosed that he found following injuries on the dead body of Reshmi:-

“ “ 1) Multiple abrasion of various shapes and sizes as shown in

the fig X detected over the both sides of the neck 2 cm lateral to larynx on either side and 2 cm below the left angel of jaw and 2.5 cm below the right angle of jaw both sides lying 6 cm apart to each other.

2) Two abrasions on left side were of crescent shape like nail marking.

He further deposed that cause of death in this case was due to cardiac inhibition added with asphyxia, resulting from manual throttling which was antemortem and sufficient enough to cause death in ordinary course of life. Time that elapsed between injury and death was within few seconds and between death and postmortem examination was 6 to 24 hours. He proved copy of PMR Ex. PG.

9. When examined under Section 313 CrPC the accused denied all the allegations and evidence against him and pleaded that he has been falsely implicated. He opted to lead defence evidence but later on did not lead any evidence.

10. After considering oral and documentary evidence as well as the mandate of Sections 304B IPC and 113B of the Indian Evidence Act, 1872, learned ASJ on the basis of conclusion that the appellant has committed offence punishable under the above-said Sections and sentenced him as under:-

<i>Sr. No.</i>	<i>Under Section</i>	<i>Sentence awarded</i>	<i>fine</i>	<i>In default</i>
1.	304 B IPC	Rigorous imprisonment for life	Rs. 5000/-	To undergo imprisonment for period of one year
2.	498A IPC	Rigorous imprisonment for two years	Rs. 1000/-	To undergo imprisonment for three months

The sentences were ordered to run concurrently.

11. Learned counsel for the appellant has contended that there was no demand of dowry at any point of time and the learned trial court has accepted story cooked by the complainant as a gospel truth. The allegations levelled by the complainant are improbable and there was no cogent evidence to connect the appellant with the alleged offences. There are material contradictions in the statements of prosecution witnesses. The mother of the deceased was neither cited as a witness nor examined. The allegations levelled were vague and there was no evidence of demand of dowry either at the time or before solemnization of marriage or thereafter.

12. Learned State Counsel supporting findings of the learned trial court submitted that appellant has been rightly convicted. He further submitted that appeals of co-convicts have already been dismissed by Co-ordinate Bench of this Court.

13. Having scrutinized the records of the case and having heard arguments of both sides, this Court is of the opinion that the present appeal is bereft of merits and deserves to be dismissed.

14. The conceded position emerging from the record is that marriage between the appellant and deceased Reshmi was solemnized on 07.05.1998 and deceased died within two months from the date of marriage; the death took place at the place of the appellant; multiple abrasions of various shapes and sizes were found on the person of deceased Reshmi; the cause of death was manual throttling; the appellant has not led any evidence indicating that the

deceased had not passed away due to throttling.

15. Section 304B IPC which was inserted with effect from 19.11.1986 with an intent to protect women from the death on account of demand of dowry provides that where 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 for or in connection with demand of dowry, such death shall be called dowry death and such husband or relatives shall be deemed to have caused her death.

Section 113 B of the Evidence Act inserted with effect from 19.11.1986, shifts burden upon the accused and creates presumption of dowry death.

Sections 304B IPC and 113B of the Indian Evidence Act are reproduced hereunder for ready reference:-

“Section 304B IPC

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.

Section 113B of the Evidence Act

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.

16. From the conspectus of the above quoted Sections, it can be gleaned that following are ingredients of Section 304B IPC:-

- (i) There should be death of a woman
- (ii) Death should be on account of burns or bodily injury or otherwise than normal circumstances
- (iii) Death should take place within seven years of marriage
- (iv) It must be shown that the woman was subjected to cruelty or harassment by the husband or any other family member.
- (v) Cruelty or harassment was for or in connection with demand of dowry.

17. In the case in hand, the death took place on account of bodily injuries and it took place within two months from the date of marriage and the cause of death is asphyxia being a result of manual throttling. As per evidence on record, the deceased was subjected to harassment by husband-appellant and other family members. Thus, the case of the appellant falls within four corners of Section

304B IPC.

In view of Section 113 B of the Indian Evidence Act, the Court is supposed to presume that husband (appellant herein) had caused dowry death as it has been alleged and proved that deceased was subjected to harassment in connection with demand of dowry.

It is apt to mention here that the appeals filed by co-convicts bearing Nos. CRA-507-DB of 2001 and CRA-241-DB of 2003 stand dismissed vide judgment dated 14.11.2008 passed by a Co-ordinate Bench of this Court.

18. In view of the above findings, this Court finds that the appeal is bereft of merits and the appellant has rightly been convicted and sentenced under Sections 498A and 304B IPC. Thus, the appeal deserves to be dismissed and is accordingly dismissed.

It has also been brought to our notice that the appellant has undergone 14 years, 09 months and 15 days of sentence and has been released by the State Government prematurely on 26.4.2021 as per Government instructions on payment of fine of Rs. 6000/-.

(G.S. SANDHAWALIA)
JUDGE

(JAGMOHAN BANSAL)
JUDGE

22.8.2022

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : No