

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

CRA-S-220-SB-2004 (O&M)
Reserved on: September 19, 2022

Date of Decision: September 29, 2022

Samunder and another

... Appellants

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Rajesh Arora, Advocate,
for the appellants.

Mr. Karan Garg, AAG, Haryana.

Vivek Puri, J.

Present appeal has been preferred against the judgment of conviction dated 03.12.2003 passed by the Court of learned Sessions Judge, Faridabad, vide which both the appellants have been convicted for having committed the offence punishable under Sections 304-B and 498-A of the Indian Penal Code (for short 'IPC') and the order of sentence dated 05.12.2003 vide which they have been sentenced to undergo rigorous imprisonment for a period of two years with fine of Rs. 500/- each under Section 498-A IPC and in default, the defaulter to further suffer two months rigorous imprisonment. The appellants have been further sentenced to undergo rigorous imprisonment for a period of seven

years each under Section 304-B IPC. Both the sentences have been directed to run concurrently.

The facts as put forth by the prosecution are to the effect that the marriage of Kamla deceased was solemnized with Samunder, appellant on 23.04.2000. Soon after the marriage, Samunder and his mother, namely, Raghbiro, appellant, started torturing and harassing the deceased on account of demand of dowry. They used to turn her out of the matrimonial house time and again. About 45 days prior to the occurrence, Samunder, appellant, asked the deceased to bring a sum of Rs. 20,000/- from her brother. She expressed her inability to honour the demand as her brother had already spent beyond his financial means at the time of marriage and was not in a position to pay the amount. The deceased was given beatings and her hand was burnt by giving electric shock by Samunder, appellant. The deceased came to her parental house. Thereafter, Samunder, appellant along with his brother-in-law, Satish visited the parental house of the deceased and apologized for the happenings. On 06.07.2002 at about 4.30 p.m., the brother of the deceased visited the in-laws house of the deceased to know about her well being and it was found that his sister was lying dead. On enquiry, it revealed that the deceased had consumed celphos tablets and has been killed on account of demand of dowry. Consequently, on the basis

of the application of Bijender, complainant, who is the elder brother of the deceased, the FIR has been registered.

On completion of the investigation, the challan was presented under Sections 304-B, 498-A and 302 IPC. As the offence under Sections 304-B/302 IPC were exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions in terms of order dated 05.08.2002 passed by the Court of learned Judicial Magistrate First Class, Palwal.

A prima facie case under Sections 498-A and 304-B IPC was made out against the appellants. The charge was accordingly framed. The contents thereof were read over and explained to them to which they pleaded not guilty and claimed trial.

In support of its allegations, the prosecution has examined 06 witnesses. Dr. J.D. Singh, PW-1, was a member of the Medical Board, which had conducted the post mortem examination on the dead body of the deceased. As per the post mortem examination report (Ex.PA), the cause of death was stated to be asphyxia as a result of smothering which was ante-mortem in nature and sufficient to cause death in ordinary course of nature. The viscera was sent to chemical examiner and on receipt of the report (Ex.PC), aluminium phosphoide (celphos) was detected in stomach, parts of small and large intestines, parts of lung, liver,

spleen and kidney. Consequently, it was opined that the cause of death was asphyxia and smothering on account of consumption of poison. Bijender, PW-2, is the brother of the deceased and the case has been registered on the basis of the application (Ex.PD) submitted by him to the police authorities. He has testified with regard to the demand of Rs. 20,000/- raised by the appellant and mal-treatment given to the deceased on account of demand of dowry. Bharti, PW-3, is the father of the deceased. SI Bharat Singh, PW-4, was posted as officer incharge, Police Station Hodal and on completion of the investigation, the report under Section 173 of the Code of Criminal Procedure (for short 'Cr.P.C.') was submitted by him. Manoj Kumar, PW-5, is the draftsman and he had prepared the scaled site plan (Ex.PE). ASI Ramesh Chand, PW-6, had conducted the investigation of the case and on the receipt of application (Ex.PD) submitted by Bijender Singh (PW-2), he had made the endorsement (Ex.PD/1) and on the basis thereof, FIR (Ex.PD/2) has been registered. He also conducted the inquest proceedings. Besides, on 09.07.2002, he took into possession the dowry articles vide recovery memo (Ex.PG).

In their statements recorded under Section 313 Cr.P.C., both the appellants have admitted the fact of marriage of Samunder, appellant with the deceased on 23.04.2000. However, the allegations with regard to demand

of dowry and mal-treatment meted out to the deceased on that score have been denied. The defence version put forth by the appellants is to the effect that at no point of time, they had raised the demand of Rs. 20,000/-, the deceased was never mal-treated or beaten by them and at no point of time, she was given the electric shocks. A false case has been planted upon them after due deliberations and consultations.

The appellants have examined Suresh Singh, DW-1, who is the cousin of Sumender, appellant and Chunni, DW-2, their neighbourer.

In terms of the judgment of conviction dated 03.12.2003 and order of sentence dated 05.12.2003, the appellants were convicted and sentenced. Aggrieved by the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred.

I have heard learned counsel for the parties and perused the record.

As per the version of the prosecution, the marriage of the deceased was solemnized with Samunder, appellant on 23.04.2000. The appellants had been subjecting the deceased to cruelty and harassment on account of demand of dowry. The death has occurred on 06.07.2002 and the cause of death has been stated to be

asphyxia and smothering on account of consumption of poisonous substance.

While assailing the judgment of the learned trial Court, it has been argued by the learned counsel for the appellants that presently, the appellants no.1 and 2 are aged about 50 years and 70 years, respectively. It is emerging in the statement of Bijender, PW-2 that on the day of occurrence, he visited the house of the appellants along with other persons and thereafter, went back. On the following day, the FIR has been lodged after due deliberations. The allegation with regard to demand of Rs. 20,000/- has been disclosed for the first time after the occurrence. No complaint was submitted at any forum either by the deceased or any member of her parental family during her life time raising any allegation of mal-treatment, harassment or cruelty meted out to the deceased by the appellants. Even the deceased had not written any letter to her parental family members with regard to the allegations of cruelty as put forth against the appellants. Even Bijender, PW-2 has admitted in his cross-examination that he had not made any complaint to anyone except the father of Samunder, appellant. The case of the prosecution mainly hinges on the deposition of Bijender, PW-2 and Bharti, PW-3, who are brother and father, respectively, of the deceased. They are interested in the success of the case and have

given discrepant version on some aspects of the case. The link evidence in the instant case is not reliable as the post mortem examination was conducted on 07.02.2002 and the parcel containing viscera was sent to the Forensic Science Laboratory after a lapse of about 15 days. The deceased was unhappy as she wanted to visit her parental house in the month of July, 2002, but the appellants had advised her to refrain from visiting at that juncture as it was busy season for the agriculturists and it was a sowing season. The deceased got annoyed and had committed suicide on that score. Furthermore, there is no custom in the community of the appellants of dowry. This aspect of the version has emerged in the statements of the defence witnesses. The suicidal death of the deceased had no concern with the demand of dowry and cruelty or harassment on that score.

On the contrary, while supporting the judgment of the learned trial Court, it has been mainly argued by the learned State counsel that the cause of death was asphyxia and smothering on account of consumption of poison. The death has occurred otherwise than under normal circumstances within a period of about two years and three months from the marriage. There is specific allegation with regard to the demand of Rs. 20,000/- and the deceased was being mal-treated on account of demand of dowry. She was even given electric shocks about 1-1/2 month prior to the

occurrence. The deposition of the witnesses cannot be discarded merely on the score that they are interested witnesses. Moreover, the FIR has been lodged with due promptitude on the following day of occurrence. The link evidence is reliable and there is nothing to suggest that the parcel of the viscera was tampered with at any point of time. The defence version as sought to be put forth in the statements of defence witnesses is not reliable and is a result of afterthought.

The relationship of the appellants with the deceased has not been disputed. In the statements recorded under Section 313 Cr.P.C., the appellants have admitted the fact that the marriage of the deceased was solemnized with Samunder, appellant on 23.04.2000. It has also not been disputed that Raghbiro, appellant, is mother-in-law of the deceased.

The question which arises for consideration is as to whether the case under Section 304-B IPC is made out against the appellants or not.

Section 304-B IPC provides as following:-

“304B. 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 subsection, “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.”

As per the provisions of Section 304-B IPC, in the event of proof of the fact that soon before death, the deceased was subjected to cruelty or harassment by her husband or any of the relative for or in connection with any demand of dowry and the death has occurred otherwise than under normal circumstances, within a period of seven years of marriage, such death shall be called “dowry death”.

At this stage, it will be appropriate to mention here that presumption has to be raised with regard to the dowry death as per the provisions of Section 113-B of the Indian Evidence Act, which provides as under:-

“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.

Explanation – For the purposes of this section, “dowry death” shall have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860)”

On a conjoint reading of Section 304-B IPC and Section 113-B of the Indian Evidence Act, the essential ingredients pertaining to the offence are enumerated here-in-below:

- (i) The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstances,
- (ii) Such death should have occurred within seven years of her marriage,
- (iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband soon before her death,
- (iv) Such cruelty or harassment should be for or in connection with demand of dowry.

On advertng to the merits of the present case, it may be mentioned here that the marriage of the deceased was solemnized with Samunder, appellant on 23.04.2000. The cause of death is stated to be asphyxia and smothering on account of consumption of poison. The death has occurred on 06.07.2002. The post mortem examination has been conducted on 07.07.2002. As per the report of the Forensic Science Laboratory (Ex.PC), aluminium phosphoide

(celphos) was detected in stomach, parts of small and large intestines, parts of lung, liver, spleen and kidney. Consequently, the cause of death has been stated to be asphyxia and smothering on account of consumption of poisonous substance.

Learned counsel for the appellants has sought to dispute the genuineness of the report of the Forensic Science Laboratory on the score that there is a delay of 15 days in sending the parcel containing viscera to the Forensic Science Laboratory. In this regard, it may be mentioned here that the perusal of the report of FSL indicates that the seals on the parcel was intact and tallied with the specimen seals as per forwarding authority's letter. There is nothing on record to indicate that the parcel was tampered with at any point of time during the period it remained in custody of the Investigating Officer and till it reached the office of the Forensic Science Laboratory. In these circumstances, it has to be construed that the cause of death in the instant case is otherwise than under normal circumstances and the death has taken place within a period of seven years from the date of marriage.

The next significant aspect to be seen in the instant case is as to whether the deceased was subjected to cruelty or harassment by the appellants for or in connection with demand of dowry.

The occurrence took place on 06.07.2002 and the FIR has been lodged on the following day. It is emerging in the cross-examination of Bijender, PW-2, that he reached the house of the appellants and found his sister dead, he returned back to his house at about 8 or 8.30 p.m. and narrated the incident to his family members. Thereafter, he along with other relatives had also visited the house of the appellants and again returned back to his house during the late night hours. On the following day, the matter was reported to the police. Although, it is emerging in the statement of Bijender, PW-2, that he along with relatives and respectables reached back to his house at about 10.30 p.m., but it is significant to note that the matter was reported to the police in the morning hours on the following day of occurrence. There is nothing on record to indicate that the intervening time has been utilized to concoct a false, coloured or exaggerated version against the appellants. Even no effort was made to implicate the other relatives of the appellants. In such circumstances, it cannot be said that there is significant delay in lodging the FIR and even there is nothing to suggest that a concocted version has been introduced as a result of afterthought.

The prosecution has also sought to put forth a case to the effect that about 45 days prior to the occurrence, the deceased was given beatings by the appellants on

account of her refusal to meet a demand of Rs. 20,000/-. She was turned out of her matrimonial house and after giving electric shocks. However, Sumender, appellant along with his brother-in-law Satish visited the parental house of the deceased and on their apology, the deceased was again sent back to her in-laws house. Merely because the said incident was not reported to any authority cannot be construed as a circumstance to hold that a false allegation with regard to cruelty has been put forth against the appellants. It is quite natural that the primary effort on the part of the parental family of the daughter would have been that she should happily settle and peacefully reside in her matrimonial house. Furthermore, there is a categorical version to the effect that Samunder, appellant along with his brother-in-law had apologized and on the assurance, the deceased was sent back to her in-laws house. It is quite natural that the parental family members of the deceased would have avoided to report the matter to the police authorities or share the allegations leveled against the appellants with other people in an attempt to avoid the dispute getting aggravated on that score.

The version as sought to be put forth by the brother and father of the deceased cannot be disputed on the score that they are relatives of the deceased and interested in the success of the case. It is quite natural that

in the event, a women is being harassed or mal-treated on account of demand of dowry by her husband or relatives, she would have shared her grievance at the first instance with her parental family members not with the strangers. The brother and father of the deceased are the natural witnesses to whom the deceased would have been informed with regard to the demand being raised by the appellants and mal-treatment meted out to her on that score. Consequently, their deposition cannot be discarded or viewed with distrust or suspicion only on the score that they are relatives of the deceased.

The discrepancy pointed out in the statement of two witnesses is to the effect that Bijender, PW-2 has deposed to the effect that about 1-1/2 month prior to the occurrence, the deceased was given beatings by both the appellants, whereas, Bharti, PW-3, has deposed to the effect that about 1-1/2 month prior to the occurrence, the deceased was given electric shocks by Samunder, appellant. The discrepancy as pointed out cannot be termed to be significant enough to view the case of the prosecution with any doubt. Both the witnesses are categoric and consistent to the effect that both the appellants had been harassing the deceased on account of bringing insufficient dowry and furthermore, a demand of Rs.20,000/- was raised about 1-1/2 month prior to the occurrence.

The appellants have examined Suresh Singh, DW-1 and Chunni, DW-2 during the course of their defence evidence. It is emerging in the statement of Suresh Singh, DW-1 who is the relative of the appellant, that in their community, there is no custom of exchange of dowry articles. However, it is emerging in the statement of Chunni, DW-2 that some dowry articles were given at the time of marriage. It shall not be out of place to mention here that during the course of investigation, the dowry articles have also been recovered by the Investigating Officer and were taken into possession vide recovery memo Ex.PG. Furthermore, the defence witnesses have sought to put forth a case to the effect that the deceased had expressed her desire to visit her parental house in the month of July, 2002. However, the appellants had advised her not to visit at that juncture, as it was a busy season for the agriculturists and it was a sowing season. Being annoyed, she might have committed suicide on that score.

It is significant to note that during the course of cross-examination of Bijender, PW-2 and Bharti, PW-3, the brother and father, respectively of the deceased, no such defence version has been sought to be put forth on behalf of the appellants. Even in their statements recorded under Section 313 Cr.P.C., the appellants have not raised any such defence version. Furthermore, the dowry articles have been

recovered vide recovery memo (Ex.PG), which tends to falsify the defence version that there is custom in the community of appellants with respect to exchange of dowry articles. Consequently, the defence version as emerging in the statements of the defence witnesses does not inspire confidence and appears to be a result of afterthought.

On the perusal of the material on record, it is proved and established that the appellants have been raising demand of dowry and subjecting the deceased with cruelty soon before her death. The death has occurred otherwise than under normal circumstances within a period of seven years of the marriage.

The prosecution has successfully proved and established the guilt of the appellants beyond the shadow of reasonable doubt and no illegality or irregularity is made out in the judgment of conviction and order of sentence passed by the learned trial Court. Consequently, the findings as recorded by the learned trial Court are upheld.

For the aforesaid reasons, the appeal, being devoid of merit, is dismissed.

September 29, 2022
vkd

(Vivek Puri)
Judge

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes