

In the High Court for the States of Punjab and Haryana at
Chandigarh

CRA-S-983-SB-2004 (O&M)
Reserved on: September 01, 2022

Date of Decision: September 19, 2022

Inder Kaur and another

... Appellants

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Rahul Vats, Advocate,
for the appellants.

Mr. Karan Garg, AAG, Haryana.

Vivek Puri, J.

The present appeal has been preferred against the judgment of conviction dated 26.03.2004 vide which the appellants have been convicted under Sections 498-A, 304-B read with Section 34 of the Indian Penal Code (for short 'IPC') and the order of sentence dated 27.03.2004 vide which they have been sentenced as following:-

1)	498-A/34 IPC	To undergo rigorous imprisonment for three years with fine of Rs.500/- each and in default of payment of fine, to further undergo rigorous imprisonment for three months each.
2)	304-B/34 IPC	To undergo rigorous imprisonment for seven years with fine of Rs.1000/- each and in default of payment of

		fine, to further undergo rigorous imprisonment for six months each.
--	--	---

It was further directed that all the substantive sentences shall run concurrently

The appellants have been set up to face trial for having commission of offence under Section 304-B/34 of IPC by the Officer incharge, Police Station City Gurgaon.

Briefly the case of the prosecution is to the effect that the marriage of Harjit Kaur deceased was solemnized with Inderjeet Singh-appellant on 15.09.2002. Sufficient dowry articles were given at the time of marriage, but the appellants were not happy with the dowry articles given at the time of marriage. Soon after the marriage, they started harassing the deceased for bringing cash amount of Rs. 1,00,000/- from her parents as they were to purchase the goods for the shop and also to make payment of the borrowed amount. The deceased was treated with cruelty on account of demand of dowry and she died on 25.05.2003 as a result of hanging. On the receipt of the message, ASI Hawa Singh along with police officials had reached the house of the appellants where dead body was lying. On the basis of the statement of Tejinder Singh, the brother of the deceased, the FIR has been registered.

On completion of the investigation, the report under Section 173 Cr.P.C. has been presented against the appellants.

As the offence under Section 304-B IPC was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions in terms of the order dated 05.08.2003 passed by the Court of learned Chief Judicial Magistrate, Gurgaon.

A prima facie case under Sections 498-A/304-B read with Section 34 IPC was made out against the appellants. Accordingly, the charge was framed and the contents thereof were read over and explained to them, but they pleaded not guilty.

In support of its allegations, the prosecution has examined 13 witnesses besides producing documentary evidence. The statement of the appellants under Section 313 Cr.P.C. has been recorded, but no defence evidence has been led by them.

Vide judgment of conviction dated 26.03.2004 and order of sentence dated 27.03.2004, the appellants were convicted and sentenced as mentioned aforesaid.

Aggrieved against the judgment of conviction and order of sentence, present appeal has been filed.

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

The marriage of the deceased was solemnized with Inderjeet Singh-appellant No.2 on 15.09.2002 and death took place on 25.05.2003. The case has been registered on the basis of the statement of Tejinder Singh, PW-7, who is the brother of the deceased. Rattan Singh, PW-8 and Balwinder Kaur, PW-10, are the father and mother, respectively, of the deceased. Suresh Kumar @ Shashi Dua, PW-9, was the mediator in the marriage. ASI Prabhu Dayal, PW-1, had recorded the FIR Ex.PA/1 on the receipt of the ruqa (Ex.PA). Inspector Sube Singh, PW-2, was the officer incharge, who presented the challan after completion of the investigation. Constable Lal Chand, PW-3, had carried the dead body to the hospital for the purpose of post mortem examination. Dr. B.B. Aggarwal, PW-4, along with Dr. R.K. Sachdeva had conducted the post mortem examination on the dead body of the deceased. As per their opinion, the cause of death was asphyxia caused by hanging. Ex.PC is the copy of the post mortem report. Naresh Kumar, PW-5, had prepared the scaled site plan (Ex.PW5/1) depicting the place of occurrence. Constable Bhagwan Dass, PW-6, had delivered the special reports after the registration of the FIR. Tilak Raj, PW-12 and N.K.Sharma, PW-13 had proved the photographs. ASI Hawa Singh, PW-11, is the Investigating Officer.

In their statements recorded under Section 313 Cr.P.C., the appellants have denied the correctness of the incriminating evidence appearing against them. The allegations with regard to demand of dowry have been denied. It has been alleged that the deceased had committed suicide on account of poverty. However, no defence evidence has been led by the appellants.

Learned counsel for the appellants, while assailing the judgment of the learned trial Court has not disputed the relationship of the deceased with the appellants. It has not been disputed that the marriage of the deceased was solemnized with Inderjeet Singh-appellant on 15.09.2002 and Inder Kaur-appellant is the mother-in-law of the deceased. The main plank of argument of the learned counsel for the appellants is to the effect that the conviction has been recorded primarily on the basis of the deposition of the witnesses, who are relatives of the deceased and interested in the success of case. During the life time of the deceased, no complaint was submitted at any forum either by the deceased or any member of her parental family with regard to the allegation of demand of dowry or cruelty meted out to her on that score as put forth by the prosecution. Even no panchayat was convened at any point of time. There are discrepancies in the statements of the witnesses. Tejinder Singh, PW-7, and Balwinder Kaur, PW-10, had

testified to the effect that the demand to the tune of Rs.1 lakh was raised by the appellants, whereas, Rattan Singh, PW-8, has deposed to the effect that the demand to the tune of Rs. 1.5 lakh was raised. Suresh Kumar @ Shashi Dua, PW-9, was the mediator in the marriage and residing in the neighbourhood of the appellants. He has not stated anything with regard to harassment or mal-treatment meted out to the deceased at the hands of the appellants. Even there is nothing on record to indicate that any demand was raised by the appellants at the time of marriage or prior to it.

On the contrary, while supporting the judgment of the learned trial Court, it has been argued by the learned State counsel that the death had occurred with a period of about 8-1/2 months from the date of marriage, otherwise than under normal circumstances. The intervening time period was too short to make any grievance public. The discrepancies with regard to the amount of the demand as pointed out is in consequential and does not in any manner effect the genuineness of the prosecution case and the credibility of the witnesses. There had been demand of cash and the deceased was mal-treated on that score soon before her death.

The relationship between the parties has not been disputed. The marriage of the deceased was solemnized with Inderjeet Singh-appellant on 15.09.2002 and the death took

place on 25.05.2003 on account of hanging. As per the post mortem examination report, the cause of death is asphyxia due to hanging. Consequently, it is established that the death has occurred otherwise than under normal circumstances, within a period of 8-1/2 months of the marriage.

Now, it has to be seen as to whether the deceased was subjected to cruelty or harassment by the appellants for or in connection with the demand for dowry.

As per the provisions of Section 304-B of IPC, in the event of proof of fact that soon before the death, the deceased was subjected to cruelty or harassment by her husband or any of her relative for or in connection with demand of dowry, such death will be called "dowry death". Section 304-B IPC has proximate nexus with Section 113-B of the Indian Evidence Act, which provides as following:-

"113B. 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 has 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.:

On a conjoint reading of Section 304-B IPC and 113-B of the Indian Evidence Act, a comprehensive picture

emerges that if a married woman dies in unnatural circumstances within a period of seven years from her marriage and there are allegations of cruelty or harassment upon such married woman for or in connection with demand of dowry by the husband or relatives of the husband, the case would squarely come under Section “dowry death” and there shall be a presumption against the husband and the relatives.

Tejinder Singh, PW-7, Rattan Singh, PW-8 and Balwinder Kaur, PW-10 are the brother, father and mother, respectively, of the deceased. They have testified with regard to the demand of cash as raised by the appellants and the deceased having been subjected to cruelty and mal-treated on that score. Their deposition cannot be discarded merely on the score that they are the relatives of the deceased. It is quite natural that in the event, a woman is being harassed or mal-treated on account of demand of dowry by her husband and his relatives, she would have shared her grievances at the first instance with her parental family members. It is quite natural that the zeal on the part of the parents of a daughter would be that she should be happily settled in the matrimonial house. In such circumstances, they would have avoided to share with regard to the allegations leveled against the appellants with the other people in an attempt to avoid the dispute getting aggravated

on that score. Even otherwise, in the event, any such demand was required to be honoured, the same would have been honoured by the parental family of the deceased. In such circumstances, there could be no occasion with such a woman or her parental family to share their grief or raise grievance with any person, who is not connected with the family affairs. Furthermore, no such demand would have been raised in the presence of the persons, who were strangers to the family. The categoric statement of the brother and parents of the deceased are indicative of the fact that she was subjected to mal-treatment and harassment on account of demand of dowry by the appellants. The minor discrepancy with regard to the amount pertaining to which the demand was raised by the appellant is in consequential and does not in any manner effect the genuineness of the prosecution version or tend to discard the testimony of the witnesses.

In the event, the material on record does not indicate that any demand of dowry was raised at the time of marriage or prior thereto cannot be termed to be a circumstance to conclude that no such demand would have been raised subsequent to the marriage. It shall not be out of place to mention here that at the time of marriage, sufficient dowry articles were given and the same have also been recovered during the course of investigation vide

recovery memo Ex.PE. Ex.PF of the list of the articles of istridhan that have been recovered, which include golden and silver jewellery, two wheeler, furniture items, electrical gadgets, clothing, etc. Even there is material to indicate that subsequent to the marriage on the demand of the appellants, electric motor and cooler were also given to the appellants. In the instant case, there had been a demand of cash to augment in the business and clear the debts. In the event, the demand had been met with, its benefit would have enured to the entire family.

Suresh Kumar @ Shashi Dua, PW-9, was the mediator in the marriage and residing in the neighbourhood of the appellants. It is emerging in his cross-examination that there was no demand of dowry raised through him at any stage and even the deceased had neither met him nor made any complaint against the appellants. In this regard, it may be mentioned here that subsequent to the marriage, the demand was being raised from the deceased, who had informed her parental family members. Moreover, merely because any such grievance was not shared with the mediator in the marriage by the deceased will not tend to falsify the version of the prosecution. It has already been observed that the deceased would have shared her grievance only with her parental family members.

On the perusal of the material on record, it is proved and established that the appellants had been raising demand of dowry and subjecting the deceased with cruelty soon before her death. The death has occurred otherwise than under normal circumstances and that too within a period of about 8-1/2 months 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 passed by the learned trial Court. Consequently, the finding of judgment of conviction as recorded by the learned trial Court is upheld. However, it is significant to note that the offence under Section 304-B IPC is punishable only with imprisonment. It does not provide for imposition of fine. In such circumstances, the sentence of fine of Rs. 1,000/- each imposed upon the appellants with regard to the offence under Section 304-B IPC is liable to be set aside. However, the sentence of rigorous imprisonment for the said offence is not altered.

With the aforesaid partial modification in the sentence, the appeal being devoid of merit, is dismissed.

September 19, 2022
vk d

(Vivek Puri)
Judge

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No